Montana State Library

Records Digitization Project

COVER SHEET

This page is not part of the original document and was inserted for formatting purposes

Montana State Library

Records Digitization Project

COVER SHEET

This page is not part of the original document and was inserted for formatting purposes.

S
328.3
L13rac
1976

REPORT OF THE
ADMINISTRATIVE CODE COMMITTEE
TO THE
FORTY-FIFTH MONTANA LEGISLATURE

(Pursuant to 82-4203.5, R.C.M. 1947)

STATE DOCUMENTS COLLECTION

MAR 20 2003

MONTANA STATE LIBRARY
1515 E. 6th AVE.
HELENA, MONTANA 59620

December 1976

MONTANA STATE LIBRARY
3 0864 1001 8601 7

REPORT OF THE

ADMINISTRATIVE CODE COMMITTEE

TO THE

FORTY-FIFTH MONTANA LEGISLATURE

(Pursuant to 82-4203.5, R.C.M. 1947)

December 1976

Membership

ADMINISTRATIVE CODE COMMITTEE

Sen. Neil J. Lynch, Chairman	Rep. John P. Scully, Vice-Chairman
Sen. George Roskie	Rep. Fred O. Barrett
Sen. Ann Seibel	Rep. Earl C. Lory
Sen. Jean A. Turnage	Rep. James Moore

Secretary: Roger Tippy, Staff Attorney,
Montana Legislative Council

TABLE OF CONTENTS

	Page
DIGEST OF REPORT.	1
REPORT.	3
1. Committee Activities	3
2. The Need for an Administrative Procedure Act .	5
3. Legislative Procedures	9
4. Publication of Rules	13
5. Professional and Occupational Licensing. . . .	15
6. Scope of the APA (Agency Exemptions)	17
7. Miscellaneous Revisions.	19

APPENDICES

A: A BILL FOR AN ACT ENTITLED: " AN ACT FOR THE RECODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO ADMINISTRATIVE PROCEDURE

B: A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ADMINISTRATIVE RULES TO CONFORM TO LEGISLATIVE INTENT; PROVIDING FOR THE DOCUMENTATION OF SOME LEGISLATIVE INTENT; AMENDING SECTION 82-4219, R.C.M. 1947."

C: A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE POSITION OF ADMINISTRATIVE LAW JUDGE AND A DIVISION OF ADMINISTRATIVE ADJUDICATION; PROVIDING FOR ADMINISTRATIVE LAW JUDGES TO HEAR CONTESTED CASES BEFORE PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS; AMENDING SECTION 82A-1604, R.C.M. 1947."

D: A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A STANDARD ANNUAL RENEWAL FEE FOR PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING FOR THE PAYMENT OF ALL PROFESSIONAL AND OCCUPATIONAL LICENSING REVENUE INTO ONE EARMARKED ACCOUNT FOR THE VARIOUS LICENSING BOARDS; AMENDING (numerous sections)."

E: A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ATTORNEY GENERAL TO UPDATE AND REVISE THE MODEL RULES OF ADMINISTRATIVE PRACTICE

DIGEST OF REPORT

REPORT . . . . . .

1. Committee Activities . . . . . .
2. The Need for an Administrative Procedure Act
3. Legislative Procedures . . . . . .
4. Publication of Rules . . . . . .
5. Professional and Occupational Licensing
6. Scope of the APA (Agency Exemptions)
7. Miscellaneous Revisions . . . . . .

APPENDICES

A: A BILL FOR AN ACT ENTITLED: "AN ACT TO THE RECODIFICATION OF CERTAIN PARTS OF THE LAW RELATING TO ADMINISTRATIVE PROCEDURE

B: A BILL FOR AN ACT ENTITLED: "AN ACT TO ADMINISTRATIVE RULES TO CONFORM TO LEGISLATIVE INTENT; PROVIDING FOR THE EXPIRATION OF SOME LEGISLATIVE INTENT." (SENATE FILE 52-4212), P.C.M. 1967.

C: A BILL FOR AN ACT TO ENTITLED: "AN ACT TO CREATE THE POSITION OF ADMINISTRATIVE LAW JUDGE AND A DIVISION OF ADMINISTRATIVE ADJUDICATIONS; PROVIDING FOR ADMINISTRATIVE LAW JUDGES TO HEAR CONTESTED CASES BEFORE PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS; AMENDING SECTION [illegible]-[illegible], C.S.A. 1967."

D: A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISHING A STANDARD ANNUAL RENEWAL DATE FOR PROFESSIONAL AND OCCUPATIONAL LICENSES; PROVIDING FOR THE [illegible] OF ALL THE PROFESSIONS AND OCCUPATIONAL LICENSES REVENUE SHALL ONLY BE [illegible] TO THE VARIOUS LICENSING BOARDS; AMENDING SECTIONS [illegible] SECTIONS)."

E: A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF [illegible] REQUESTING THE ATTORNEY GENERAL TO [illegible] AND REVIEW THE MODEL RULES OF ADMINISTRATIVE PRACTICE

DIGEST

To the Senate and House of Representatives of Montana:

Your joint Administrative Code Committee, established by the last legislature to monitor state agency rule making under the Montana Administrative Procedure Act, and having in fact reviewed over 220 such rule-making proceedings in the interim, hereby submits its report. The committee has no proposals to repeal any rule in the state Administrative Code; the committee found that its objection usually sufficed to persuade an agency to drop a proposed rule.

However, the committee's report includes four bills to amend the Administrative Procedure Act and related statutes. In the past two years, several hundred pages worth of rules, each perhaps noncontroversial by itself, have grown into the Administrative Code. The growth tendency of administrative government, of which publication of rules is merely the most tangible sign, is a matter of controversy. The committee's legislative recommendations would check this growth tendency through changes in both legislative procedures and administrative procedures.

Repeal of the APA is sometimes advocated as a simple solution to this problem. However, this would accomplish nothing. The APA is not a grant of authority to adopt rules--rather it controls the way in which some 350 other laws have granted rule making power. The committee's investigations point to vague, broadly worded, hastily considered delegations of authority coming out of the legislature as the source of the rules explosion.

A major thrust of the committee's proposals is to set up reminders in the legislative process when authority is being delegated by a bill, in order that that bill receives extra attention. Statements of intent and purpose by standing committees would be the reminders. A rule inconsistent with stated intent and purpose could be declared invalid by a district court.

The committee has also proposed several changes in the operation of professional and occupational licensing boards. The typical licensing statute is essentially a self-government charter to a profession or trade, recalling the guilds of medieval times. Most board members are fair-minded and commendable citizens, but the guild system does have the potential for arbitrariness. The committee recommends that an impartial officer, to be known as an administrative law judge, conduct all licensing hearings brought under board statutes.

Finally, this report suggests a number of changes in the manner of publishing notices and rules, and adding to the number of agencies subject to APA procedures and legislative oversight.

Part 1

COMMITTEE ACTIVITIES

The committee met thirteen times in the interim, at intervals of approximately six weeks. At each meeting, the members reviewed the rules which agencies had proposed in the most recent Administrative Register. This work encompassed 220 distinct rule making proceedings between June, 1975, and October, 1976. Rules were reviewed for adequacy of statutory authority, for substance and practicality, and for the desirability of public hearings in cases where the agency did not contemplate a hearing. The committee was obliged to request public hearings four times in 1975; the next year this step was not taken at all as the agencies used better judgment in anticipating public interest. The committee also reviewed the statements of reasons for the adoption of rules written by the agencies after the rules took effect.

The committee also undertook a variety of special projects. One of the first was to attack abuses of the emergency rule making procedure. The committee saw many notices of alleged emergencies which involved nothing more than bureaucratic convenience. The members insisted, first in an amicus brief to the Supreme Court, and then in a memorandum to all agencies, that an "imminent peril to the public health, safety or welfare" meant just what it said, and that this necessary condition for emergency rule making should therefore seldom occur. Since the committee's remonstrative memo of August 12, 1975, there have been only three cases of emergency rule making.

Another early project sought to persuade the Attorney General to update and revise some of the model rules of administrative practice. These rules were drawn up in 1972 and had never been modified in the light of experience or amendments to the APA. The committee petitioned the Attorney General to amend four of the rules; he adopted two, rejected one (a petition to adopt pre-hearing discovery procedures) and agreed to the fourth but never had the amendments typed and filed.

After several months of looking at proposed new rules the committee resolved to investigate the treatment of existing rules by the agencies. The APA directs agencies to review their rules at least once a year to determine, in part, if any are obsolete or unnecessary; the committee found this mandate honored more in the breach than in the observance. Staff studies were made of the Workers' Compensation Division, the Community Services Division of SRS, and the Boards of Medical Examiners, Real Estate, and Hearing Aid Dispensers. The studies found rules resting upon statutory authority which had been repealed, and also found wide variations in agency interpretations of what was a "rule" and subject to the APA.

In this committee's opinion, outside review of an agency's existing rules can be an effective means of reducing bureaucratic waste. As under the similar concept of zero-base budgeting, the justification for a rule should periodically be reexamined. The committee recommends that its successor continue the practice of reviewing existing rules of selected agencies. From the discussions arising out of these studies, the committee had several bills drafted to propose amendments to the APA and other statutes. Hearings were held on these drafts in the spring and summer of 1976; the most extended dialogues were with the various licensed professions and occupations and with the Board of Regents. Out of these hearings many of the committee's recommendations emerged. Another source of recommendations came from the committee's continuing consultation with the Office of the Secretary of State regarding publication of the monthly Administrative Register and Code.

Part 2

THE NEED FOR AN ADMINISTRATIVE PROCEDURE ACT

Some persons disturbed by the proliferation of bureaucracy have called for repeal of the Administrative Procedure Act. In the committee's view, this would be a mistake akin to the ancient practice of slaying the messenger who brought bad news. The ancients didn't get rid of any bad news that way, they just heard later. We, likewise, would not get rid of any forms or regulations by repealing the APA; we would, however, have a much harder time learning what new forms or regulations were being concocted.

The rapid growth of published rules is often described as an unhealthy trend which ought to be checked. The committee does not disagree with this view but suggests that it reflects an incomplete statement of the problem. In the larger picture, rule making is only a symptom; the root cause of the problem is statutes which delegate the legislature's policy-making function to agencies. Suppress rule making only and the agencies will make policy in other ways -- orally, informally, through ad hoc decisions varying with the changes in directors. A certain degree of this unwritten law will be around as long as human beings rather than computers run the bureaucracy. However, a sensible mixture of written and unwritten policies in a bureaucracy is preferable to a bureaucracy operating purely by unwritten policies. Thus, agencies will -- and should -- continue to adopt rules as long as the legislature continue to delegate more policy-making powers to them.

The extent of this delegation is startling. A computer search of the statutes revealed nearly 350 code sections, listed in the following table, which expressly grant rule making power to state agencies. This count is incomplete because it misses sections which impliedly delegate the authority without using the words "rule" or "regulation".

TABLE OF DELEGATIONS

Department of Administration: 59-538, 59-539, 59-801, 59-914, 59-1008, 59-1010, 59-1107, 59-1506, 68-1406, 68-1803, 68-2702, 69-2111, 69-2123, 69-6610, 79-602, 82-1915.1, 82-3325, 89-3604.

Department of Agriculture: 3-210, 3-211, 3-232, 3-232.1, 3-311, 3-312, 3-315, 3-710, 3-810, 3-1302, 3-1408, 3-1714.3, 3-1723.1, 3-1906, 3-2034, 3-2310, 3-2488, 3-2494, 3-2495, 3-2502, 3-2909, 3-3211, 3-3309, 3-3401, 27-223, 27-234.

State Auditor: 15-2024, 40-2710, 40-3425, 40-3669, 40-4215, 40-4758, 40-5333, 40-5608, 83-903.

Department of Business Regulation: 5-611, 5-1002.1, 5-1027, 5-1401, 14-609, 18-520, 27-405, 27-407, 27-413, 27-414, 35-145, 47-203, 60-203.2, 60-232, 74-606, 75-9206, 85-403, 90-160.

Department of Community Affairs: 1-204.2, 1-301, 1-319, 1-323, 11-1411, 11-3862, 11-3863, 16-1229, 16-1909, 35-504, 50-1806, 82-4525, 84-7521.

Board of Public Education, Superintendent of Public Instruction: 75-5616, 75-5707, 75-6002, 75-6416, 75-6702, 75-6729, 75-6802, 75-6925, 75-7003, 75-7004, 75-7005, 75-7702, 75-7703, 75-7802, 75-7803, 75-7904, 80-104, 82-3102.

Fish and Game Commission: 26-104.3, 26-104.9, 26-344, 26-345, 26-501.1, 26-813, 26-913, 26-1101, 26-1123, 26-1206, 26-1601, 26-1704, 26-1804, 26-1807, 53-1020, 62-306.

Board and Department of Health and Environmental Sciences: 10-805, 27-620, 27-721, 34-306, 41-2207, 48-137, 69-3609, 69-3909, 69-4407, 69-4117, 69-4211, 69-4402, 69-4428.1, 69-4431, 69-4704, 69-4808.2, 69-4903, 69-5005, 69-5212, 69-5213, 69-5304, 69-5406, 69-5503, 69-5804, 69-6703, 69-6712, 69-6808, 69-7008, 69-7109, 75-8207.

Department of Highways and Highway Commission: 32-1633, 32-2401, 32-2407, 32-2414, 32-3308, 32-3313, 32-3929, 32-4102, 32-4517, 32-4605, 32-4718, 53-518, 53-519.2, 53-519.3, 53-707.

Department of Institutions: 10-1251, 80-1405, 80-1411, 80-1414.1, 80-1905, 80-2414, 80-2714, 80-2803, 95-2223.

Department of Justice: 10-804, 31-103, 31-128, 31-135, 31-171, 31-206, 53-106.4, 53-157, 53-1111, 69-1808, 82-1202.

Department of Labor and Industry: 41-1201, 41-1314.2, 41-1423, 41-1713, 41-1727, 41-2305, 41-2403, 41-2605, 41-2705, 50-412.1, 50-904, 59-1613, 64-315, 69-1501, 87-121, 92-709.1, 92-814, 92-1345.

Board of Land Commissioners, Department of State Lands: 50-1037, 50-1038, 50-1204, 50-1406, 50-1506, 50-1604, 81-303, 81-423, 81-507, 81-913, 81-1104, 81-1404, 81-1601, 81-1707, 81-1727, 81-2205, 81-2408, 81-2603, 81-2709.

State Library Commission: 44-131, 44-133.

Board of Livestock: 46-104, 46-208, 46-209, 46-211, 46-218, 46-227, 46-701, 46-802, 46-907, 46-914, 46-1903, 46-2402, 46-2505, 46-2604, 46-2907.

Board and Department of Natural Resources and Conservation: 26-1520, 28-105, 28-119, 28-408, 60-127, 60-901, 70-820, 89-102.1, 89-132.1, 89-869, 89-2931, 89-3511, 89-3603.

Boards in the Department of Professional and Occupational Licensing: 66-409, 66-503, 66-806, 66-812, 66-905, 66-923, 66-923.1, 66-1017, 66-1225, 66-1303, 66-1504, 66-1815, 66-1817, 66-1927, 66-2103, 66-2202, 66-2353, 66-2409, 66-2414, 66-2416, 66-2514, 66-2605, 66-2704, 66-2713, 66-2803, 66-2805, 66-2904, 66-3005, 66-3104, 66-3107, 66-3205, 66-3303, 66-3405, 66-3504, 66-3607, 66-3704, 66-3811, 66-3905, 54-302, 62-505, 62-508, 67-2102, 67-2126, 69-3418, 69-7008, 82-303, 82A-1602.30, 82A-1605.

Public Service Commission: 8-103, 8-104.1, 8-113, 8-205, 8-206, 70-104, 70-116, 70-304, 72-116, 72-150.

Department of Revenue: 4-1-303, 51-314, 53-160, 67-2226, 67-2342, 84-437.13, 84-708.3, 84-1501.2, 84-1508, 84-1518, 84-1524, 84-1861, 84-2503, 84-2603, 84-3515, 84-4903.2, 84-4930, 84-4939, 84-4955, 84-5606.27, 84-6301, 84-6607, 84-6807, 84-6907, 84-7306, 84-7521, 91-4421.

Department of Social and Rehabilitation Services: 10-703, 10-804, 10-806, 10-1318, 41-818, 71-204, 71-210, 71-503, 71-602, 71-708, 71-1404, 71-1511, 71-1804, 71-1902, 71-1918, 71-2005, 71-2102, 71-2306, 71-2404, 71-2502.

Commissioner of Campaign Finances and Practices: 23-4786.

This list is not merely the product of recent legislatures: many of the cited sections were enacted decades ago. And many sections, both old and new, are extremely broad grants of power. Since 1915 the workers compensation agency has been "vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it". Since 1921 the livestock agency has had powers to "adopt rules and orders it considers necessary or proper to prevent the introduction or spreading of" livestock diseases. In 1973 the Department of Business Regulation was authorized to make rules "interpreting" the phrase "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful." When the legislature's intent is to hand a blank check to an agency, it is difficult to establish that the agency has subverted the legislative intent by a rule making proceeding.

At any rate, while the authority for the recent avalanche of rules is one or another of these 350 sections, and not the APA, the committee has noted a widespread misunderstanding that the APA is the cause of the rules. To clear up any confusion on this issue, the committee has proposed language from the California statutes declaring that the APA can never be used as authority to adopt a substantive rule, and that rule adopted under authority of another statute must be reasonably necessary to effectuate the purpose of that other statute.

Part 3

LEGISLATIVE PROCEDURES

This section considers two issues: how can legislative policy guidance be better communicated to state agencies before those agencies make rules, and how can legislative review be most effective when agencies make rules? These questions posit two findings which the committee makes here.

FINDING A: As statutes are now enacted in Montana, their language ordinarily fails to convey much of the intent or understanding of the legislators. Except for the letters of intent which appropriations subcommittees occasionally send to agencies, the legislature and its units have no means, outside of a bill, to formally communicate intent, understanding, or purpose behind legislative action.

FINDING B: While the legislature has adequate authority to curb agency abuses of discretion by rule making while it is in session, there is insufficient authority to curb such abuses in the long 21-month interim between regular sessions.

Instances of legislative intent not being carried out when an agency implements a statute are familiar. The Department of Revenue was criticized for misconstruing legislative intent in its property reappraisal plan and in rules for distillery representatives and wine licenses. The Social and Rehabilitation Services Agency flouted legislative intent in proposing to cut the medically needy program; an action which the August 1975 special session countermanded. The Board of Plumbers was held to the legislature's intent behind the homeowner's exemption only by virtue of a strenuous effort by the committee and other legislators.

The expression of a single intent or state of mind is purely hypothetical for an action requiring a majority of 150 differently motivated minds. For this reason, the courts divine the purpose of a statute solely from its words, and they disdain or exclude testimony by legislators, committee minutes, or like sources. Yet, all legislators know that they often reach an accord of interpretation in their committees or in the committee of the whole or joint conference committee. These accords should be preserved at least for the guidance of an administering agency, whether the courts are prepared to accept them or not.

One of the draft bills considered by the committee would have required a standing committee, when favorably reporting a bill delegating authority to a state agency, to file an accompanying statement of intent as to how the committee expected that authority to be exercised. This approach was criticized on the grounds that the legislator's decision-making process is already complicated by one document (the fiscal note) outside the bill, and another

document would multiply confusion, and that many problems of interpretation are not anticipated during legislative committee consideration.

Notwithstanding these objections, the committee is recommending this bill as the most practical means of securing some interim legislative supervision of rule making. In several states (Michigan, Wisconsin, Connecticut, South Dakota) joint legislative committees are empowered to suspend objectionable administrative rules when the legislature is not in session; when the full body does convene it must ratify the committee action or the rule takes effect. Such a formula would appear to be unconstitutional in Montana, based upon the Supreme Court's discussion of the powers of the Legislative Finance Committee (Judge v. Finance Committee, 543 P.2d 1317). Unless the constitution is amended, the legislature may not delegate one of its plenary powers -- the power to appropriate money or the power to veto rules -- to part of its membership.

The need for interim control of some sort is indicated, however, by the legislative-administrative cycle in Montana. The legislature will adjourn someday next April, having enacted a number of statutes allowing or requiring implementation by rules. The bulk of these rules will appear between July and October and will therefore have been in force 15 to 18 months before the 1979 legislature convenes. If relief from a rule is needed, this is too long to wait for it -- the damage will have been done.

Sometimes the courts can intervene and enjoin the enforcement of rules. To attempt to give the courts the same sort of rule review authority the legislature can exercise would be a mistake and a violation of the separation of powers doctrine. In reviewing a rule, a court determines whether the underlying statute is constitutional, whether it validly delegates authority to make rules, and whether the rule falls within the scope of that delegation. If a rule meets these tests, the court must respect it, even though the rule may work hardships, or it appears to be inequitable, not conducive to the best results, unwise, burdensome, or inferior (Corpus Juris Secundum, Public Administrative Bodies, §103). All those grounds are just the sorts of reasons that would justify the legislature in rejecting a rule. They are the policy determinations which give rule making its quasi-legislative character and which should not be made by judges.

The bill as proposed by the committee would allow the courts to enforce the legislature's intent by (a) documenting that intent through written committee reports on bills which delegate powers to state agencies and (b) placing the burden of proof on an agency that it had not arbitrarily disregarded legislative intent when, in the interim, the committee opposed a rule on this basis. Usually, the burden of proving a rule unreasonable is upon the party objecting to the rule. This reverse-burden formula is derived from a similar section of the Iowa APA. The requirement

that legislative intent be documented during the session will assure that any action taken against a proposed rule is taken responsibly. The committee feels it should function as the legislature's agent and not as its alter ego.

RECOMMENDATION: The committee recommends that the Joint Rules be amended for the 1977 Session to provide that standing committees furnish a statement of intent and purpose for each delegation of authority to a state agency and that this requirement thereafter be imposed by a statute which would also allow a court to invalidate a rule adopted contrary to such stated intent and purpose.

Part 4

PUBLICATION OF RULES

This section deals with the manner of publishing notices of proposed rules, and adopted rules of Montana agencies. Changes are recommended due to the following findings:

FINDING C: The current method of publishing the Montana Administrative Code and Register is unsatisfactory in that:

(1) the cost and cumbersome handling qualities interfere with the goal of wide dissemination of information about state government; citizen complaints of not being able to keep track of agency activities would not be met by this publication;

(2) the Administrative Code tends to magnify the irritating aspects of bureaucracy with features such as a ridiculously lengthy section numbering system, awkward pagination, excessive information in rule histories, and unnecessarily complex monthly maintenance instructions; and

(3) loose-leaf publication requires extremely meticulous updating each month or the accuracy of the text is lost.

FINDING D: The pending recodification of the statutes would require a fairly simultaneous revision of the Administrative Code.

The Secretary of State furnished each member of the committee with a complete set of the Administrative Code and Register in June 1975, and each following month the notices and code replacement pages. The members can testify that it would be extremely difficult for the unaffiliated citizen -- and hard enough for organizations with clerical personnel -- to keep up with this system and to justify its cost ($144 initial acquisition, between $70 and $90 each year thereafter).

The committee views the APA as potentially an important part of the legislature's constitutional obligation to facilitate citizen participation in public decisions, but as to rule making decisions the present publication requirements seem to discourage participation. One change which could be easily made would separate the Register -- the notices of proposed rules -- from the Code -- the repository of all rules. The Code is essentially a library resource, but the Register should be available to a wider audience. Maryland and Texas have recently begun publishing administrative registers in simple, readable formats which accomplish this purpose.

RECOMMENDATION: The committee recommends that the APA be amended to provide for publication of a register of proposed rulemaking, just-adopted rules with accompanying justification statements, and interpretations such as Attorney General opinions, under separate cover from the Administrative Code.

Separating the Register from the Code facilitates an analysis of the problems with the Code. The section numbering system is far longer than that employed by any other state or by the federal government; it simply needs to be halved. The same is true of the histories at the end of each rule. While many publication problems result from the provisions of the APA, these two lie within the discretion of the Secretary of State. They can be easily rectified by 1979 or 1980 if a revised administrative code is published then; however, the committee urges the Secretary of State to simplify these matters sooner if possible.

Awkward or wasteful pagination and complicated monthly instructions are consequences of the loose-leaf monthly-update system specified in 82-4206, R.C.M. 1947. The advantage of a loose-leaf system is that, if it has been properly maintained, the user knows that the current text of all rules appear in one place.

The disadvantages are uncertainty as to whether the volumes have been properly maintained and incompatibility with computer-typing systems. The committee noted South Dakota's rules publication, which was five paperback bound volumes printed from a computer data base, guaranteed accurate as of the publication date. Subsequent changes are printed in supplement volumes until a new edition is printed, which can occur fairly frequently with the aid of the computer.

The committee encouraged the Secretary of State to investigate computerized word retrieval and printing systems such as the Legislative Council utilizes for bills. The Secretary of State found the cost of entering into such systems to be fairly high. Savings offsets exist, although they are not easy to quantify. Under current procedures, each agency types camera-ready copy to the Secretary of State's specifications and files it for publication in the Code. A centralized and automated word retrieval and typing system would free agency personnel for other duties. No particular publication format should be specified in the APA, however. This should be left to the discretion of the Secretary of State and the appropriations process.

Part 5

PROFESSIONAL AND OCCUPATIONAL LICENSING

Notwithstanding the committee's confrontation with the Board of Plumbers over the homeowners' exemption rule, the licensing boards were not the busiest rule writers in the state. A study of the boards' quasi-judicial activities, conducted under the APA's contested case provisions, revealed more serious problems.

FINDING E: Since each licensing board functions within the limits of its own earmarked revenue account, made up of the examination and licensing fees it collects, and since the costs of contested case hearings must be paid from these accounts, the boards exhibit very unequal levels of enforcement activity. Boards which do take enforcement actions must play many roles in the decision-making process.

The various boards regulate as few as 50 to as many as 10,000 persons and function on budgets from $1,000 to $300,000 per year. By law each board must refer a disciplinary matter involving possible revocation or suspension of a license to a hearing examiner appointed by the director of the Department of Professional and Occupational Licensing. The examiner conducts a hearing at a cost to a board of $35-$40 an hour. He reports the evidence to the board and may include proposed findings of fact and conclusions of law; the board is responsible for writing the official findings and conclusions as well as the order.

This process involves a problem in economics and another in equity. Plainly, the smaller boards can find themselves unable to afford the costs of enforcing their statutes. The committee learned of a case where the Board of Hearing Aid Dispensers was in this position. Then, the boards which can afford enforcement find themselves wearing a great many hats. To analogize a board's civil sanctions process to the criminal process and its participants, the board investigates a complaint (like the sheriff), decides whether to press charges (like the county attorney), determines the facts (like the jury), and imposes a sentence (like the judge).

The committee borrowed an idea from Florida's APA and drafted a bill to establish an administrative law judge to hear all contested cases before licensing boards and to determine the facts and conclusions of law. Investigations, charging decisions, and final orders imposing sanctions would remain with the boards. Then, the committee debated the funding aspects of this proposed office. Over the years licensing statutes have been sold to the legislature partly on the basis that the costs of administration would be carried by the licensees and applicants, and the general taxpayer would not be liable at all. Yet the present system of charging the hearing costs to each board leads to unequal enforcement, so an alternative had to be found.

The committee proposed that the license renewal fees, which now vary from $1 to $80 among the boards, be standardized at the median figure of $16, and be paid into either the general fund or one earmarked account for the entire department. Examination and other entry fees, which would continue at varying levels, would also go into a common fund. From this source one appropriation would fund the administrative law judge and other appropriations would be made to the boards for their other activities, such as investigations, inspections, price fixing, and meetings. This proposal aroused opposition of remarkable intensity, from boards and from professional associations and societies whose members are licensed by boards. The department, and some of the boards and associations, support the proposal for the administrative law judge if it is funded through the general fund. They argue that while examination and other controls on entry into the profession benefit the profession first and the general public second, enforcement and disciplinary activities benefit the general public first and the profession second. Thus, enforcement costs would have some claim on the general fund.

As to a standard renewal fee, the committee intended to remove the image of one licensee, on the individual level, subsidizing an individual licensee of another board. Having a board ought to be worth the same amount to a nurse as to a nursing home administrator, to a physician as to a real estate broker. (Those boards which furnish continuing education services prepaid through the license fee could easily convert to a pay-as-you-study system.) The boards' defenders object to the standard fee as a subsidy on the group level -- 9,000 nurses as a group subsidizing the enforcement and support needs of 50 hearing aid dealers as a group. The answer depends on how the question is structured, and the committee prefers to seek license fee equity in terms of the individual.

RECOMMENDATION: The committee recommends two bills as alternative solutions. One would establish an office of administrative law judges with a general fund appropriation for one such judge with a clerk and office, sufficient for the licensing board cases. The other, in case the general fund appropriation is unacceptable to the legislature, would pool the revenues of all the boards into one consolidated earmarked revenue fund for the department. The latter bill would also standardize the renewal fee at $16.

If neither solution is acceptable, serious consideration should be given to abolishing the lesser boards.

Part 6

SCOPE OF THE APA (AGENCY EXEMPTIONS)

The 1971 legislation enacting the APA excluded several types of agencies which in many other states manage to operate subject to administrative procedure laws. These Montana exclusions are for state educational agencies, state institutions, state personnel agencies, and seasonal fish and game regulations. It is apparent that fish and game limits are adequately communicated by other means; the committee reexamined the other three exempted categories.

Educational policies were left out, according to the 1970 Montana Administrative Procedures Study, because of pending revisions in the school laws. Reevaluation of this exemption was suggested in the study after the education agencies were reorganized and the rest of the executive branch had gained experience with the APA. State agencies affected are the Board of Regents, the Board of Public Education, and the office of the Superintendent of Public Instruction.

The Regents, by individual members and by staff of the Commissioner of Higher Education, vigorously defended their exemption before the committee on several occasions. The most cogent argument for exemption is that the Regents make rules under authority of the constitution rather than under statutory authority delegated by the legislature. Also, application of the APA's contested case hearing procedures to student discipline matters, grade appeals, scholarship decisions and so forth would increase the expense and complexity of these proceedings. However, the APA expresses certain principles of public participation and due process which are as appropriate for higher education as for any other area of government. The Regents have directed the Commissioner of Higher Education to recommend academic administrative procedures which are consistent with APA guidelines to further protect the constitutional right of citizens to participate in board decisions. The committee recommends continued exemption of the board and university system on the understanding that this effort to develop equivalent procedures is continued with diligence.

Statewide regulations affecting elementary and secondary education include standards for teacher certification, vocational and special education programs, school bus safety, and transportation subsidies. Several of the statutes delegate policy-making in a muddled way, telling the Board of Public Education to adopt policies and the Superintendent to make regulations implementing the Board's policies. Regardless of the source, these statements are of a general and statewide nature, similar to the rules published by other agencies in the Administrative Code.

Attitudes about state institutions have changed significantly since 1970; the old "out of sight/out of mind" view has been replaced by statutes and court decisions making the treatment and the rights of institutionalized persons matters of public concern. Repealing the blanket exemption of institutions rules now in the APA would lead to formal notice and consideration of those policies which involve the rights of institution residents and their relatives. The committee notes that statements affecting only the internal management of an agency and not the public are still excluded from the definition of a rule, and expects that the minutiae of running an institution will not have to be published in the Administrative Code.

The few pages of Department of Administration policies published in the administrative code give no indication of the magnitude of rule-making activities in that agency. The department has published thousands of pages in its Classification Manual and its Administrative Manual. Most of this material is the classification and pay plan or the statewide budgeting and accounting procedures, which are better published as they are. The remainder, most of volume I of the Administrative Manual, covers such matters as sick leave, annual leave, health insurance, and compensatory overtime for all state employees. This affects a group of over 15,000 people who have a legitimate interest in notice and opportunity for hearing on these policies, and the legislature has a legitimate oversight interest.

FINDING F: The exemptions from APA rule-making procedures for public education, institutions, and state personnel policies are no longer warranted to the extent now provided.

RECOMMENDATION: Within a period ending next October, the Board of Public Education, the State Superintendent of Public Instruction, the Department of Institutions (except as to the prison), and the Department of Administration (except as to classification and accounting matters) should publish their existing rules in the Administrative Code and thereafter follow APA requirements for notice and hearing on proposed rules.

Part 7

MISCELLANEOUS REVISIONS

The first bill appended to this report also proposes amendments to sections 82-4202 and 82-4227 which will clarify the relationship of the APA to the 1975 public participation act. The concept of administrative procedure has expanded since the Revised Model State APA was drafted in 1961. Ideas like freedom of information, open meetings or sunshine laws, and citizen participation rights are now as much a part of the agency-citizen relationship as rulemaking and deciding contested cases. The Legislative Council proposes, in recodification, that all these statutes appear together in one chapter. To facilitate this rearrangement the committee bill would amend the APA definition of agency to incorporate, as to state government only, the public participation definition. Also, references to "this act" in the APA are changed to "this part" and "part" defined as only that segment of chapter 42, Title 82, which encompasses the APA.

The bill would also make two small changes in the contested case procedures. A hearing officer would be required to draft proposed findings and conclusions for an agency. Several attorneys involved in the lengthy hearings on Colstrip units 3 and 4 identified the lack of this requirement as one of the prolonging factors. Since the hearing officer was not to draft the proposed findings and conclusions in that case, he was in no position to exclude irrelevant evidence. The second change would require each conclusion of law to be supported by a citation to legal authority or by a reasoned argument. This change was suggested in a leading national treatise on administrative law and would emphasize a policy in favor of carefully reasoned decisions by agencies.

Procedure in contested cases before most agencies is also governed by the Attorney General's model rules of administrative practice. These rules were written in 1972 to implement the APA. They have not been amended or reviewed since, excepting the two minor changes made by the committee's petition in 1975.

Both practicing and agency attorneys have noted many shortcomings in these rules. The committee suggests that the legislature request the Attorney General to update and improve the model rules of administrative practice.

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO ADMINISTRATIVE PROCEDURE; AMENDING SECTIONS 82-4201 THROUGH 82-4208, 82-4212, 82-4213, 82-4215, 82-4216, 82-4217, 82-4220 THROUGH 82-4223, 82-4227 THROUGH 82-4229, AND 82A-107, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4201, R.C.M. 1947, is amended to read as follows:

"82-4201. Short title. This ~~act~~ part ~~(sections~~ 82-4201 through 82-4225) shall be known and may be cited as the "Montana Administrative Procedure Act"."

Section 2. Section 82-4202, R.C.M. 1947, is amended to read as follows:

"82-4202. Definitions. For purposes of this ~~act~~ part, the following definitions apply:

(1) "Agency" means any ~~board, bureau, commission, department, authority or officer~~ agency, as defined in 82-4227, of the state government ~~authorized by law to make rules and to determine contested cases~~, except that the provisions of this ~~act~~ part ~~shall~~ do not apply to the following:

~~(a) the legislature and any branch, committee or officer thereof;~~

~~(b) the judicial branches and any committee or officer thereof;~~

~~(c) the governor, except that an agency otherwise covered by this act shall not be exempt because the governor has been designated as a member thereof;~~

~~(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack;~~

~~(e)~~ (a) the state board of pardons, except that ~~said~~ the board shall be subject to the requirements of ~~section 3~~ ~~[~~82-4203~~]~~ and ~~5 [~~82-4205~~] of this act~~ and its rules shall be published in the Montana administrative code and register;

~~(f)~~ (b) the supervision and administration of any penal~~, mental, medical or eleemosynary~~ institution with regard to the ~~admission, release,~~ institutional supervision, custody, control, care, or treatment of ~~inmates,~~ prisoners ~~or patients~~;

~~(g)~~ (c) ~~the administration and management of educational institutions;~~ the board of regents and the Montana university system;

~~(h)~~ (d) the financing, construction, and maintenance of public works.

(2) "Rule" means each agency regulation, standard, or

statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. Substantive rules are either legislative rules, which if adopted in accordance with this part and under expressly delegated authority have the force of law and when not so adopted are invalid, or adjective or interpretive rules, which may be adopted in accordance with this part and under express or implied authority to codify an interpretation of a statute although such interpretation lacks the force of law. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to ~~section 18 [82-4218] of this act~~;

~~(c) intra-agency memoranda;~~

~~(d)~~ (c) rules relating to the use of public works, facilities, streets, and highways, when the substance of such rules is indicated to the public by means of signs or signals;

~~(e)~~ (d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules, and rules

adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

~~(f)~~ (e) rules ~~relating to personnel standards, job classifications or salary ranges for agency employees;~~ implementing the state personnel classification plan, the state wage and salary plan, or the state wide budgeting and accounting system;

~~(g)~~ (f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with ~~section 10 [82-4210] of this act~~ 82-4205 and shall be published in the Montana administrative code ~~and register~~.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes, but is not restricted to, rate making, price fixing, and licensing.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of

a license.

(6) "Party" means any person or agency named or admitted as a party~~,~~ or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public organization of any character other than an agency."

Section 3. Section 82-4203, K.C.S. 1947, is amended to read as follows:

"82-4203. Rules describing agency organization and procedures — public inspection of rules — model rules. (1) In addition to other rule-making requirements imposed by law, each agency shall:

(a) ~~Adopt~~ adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. The notice and hearing requirements contained in ~~section~~ 82-4204 do not apply to adoption of a rule relating to a description of its organization.

(b) ~~Adopt~~ adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures

available, including a description of all forms and instructions used by the agency~~.~~;

(c) ~~Make~~ make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions~~.~~;

(d) ~~Upon~~ upon request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(2) No agency rule ~~shall be~~ is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

(3) The attorney general shall prepare~~, as soon as is practicable after the passage of this act,~~ a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of ~~section~~ 82-4203(1). The attorney general shall add to, amend, or revise the model rules from time to time as he ~~shall deem~~ considers necessary for the proper guidance of agencies. The model rules~~,~~ and additions, amendments, or revisions thereto~~,~~ shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state

and provided to any agency upon request. The adoption by an agency of all or part of the model rules ~~shall~~ does not relieve the agency from following the rule-making procedures required by this ~~act~~ part."

Section 4. Section 82-4203.1, R.C.M. 1947, is amended to read as follows:

"82-4203.1. Legislative review of rules. (1) ~~The secretary of state shall, on the date the legislature convenes in regular session in 1974, transmit to both the senate and house of representatives one (1) copy of all rules in the Montana administrative code, not including superseded or repealed rules.~~

~~(2) The secretary of state shall, on the date the legislature convenes in each regular session after 1974, transmit to both the senate and house of representatives one (1) copy of all rules, which are in the Montana administrative code, adopted or amended by agencies since the convening of the previous regular session.~~

~~(3)~~ The legislature may, by joint resolution, repeal any rule in the Montana administrative code. If a rule is repealed, the legislature shall, in the joint resolution, state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the

legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

~~(4)~~ (2) The legislature may also, by joint resolution, direct a change to be made in any rule in the Montana administrative code or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall, in the joint resolution, state the nature of the change or the additional rule to be made~~,~~ and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.

~~(5)~~ (3) Rules made by agencies~~,~~ and changes in rules directed by the legislature~~,~~ under subsection ~~(4)~~ (2) of this section, shall conform and be pursuant to statutory authority."

Section 5. Section 82-4203.2, R.C.M. 1947, is amended to read as follows:

"82-4203.2. Administrative code committee — appointment and term of members — officers. The administrative code committee consists of four ~~(4)~~ members of the senate and four ~~(4)~~ members of the house of representatives appointed before the ~~sixtieth~~ 60th legislative day of the regular session in the same manner as standing committees of the respective houses are appointed.

A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. No more than two ~~(2)~~ of the appointees of each house may be members of the same political party. A member of the committee shall serve until his term of office as a legislator ends or until the end of the ~~sixtieth~~ 60th legislative day of the session of the biennium following his appointment or until his successor is appointed, whichever occurs first. The committee shall elect one ~~(1)~~ of its members as chairman and such other officers as it ~~deems~~ considers necessary."

Section 6. Section 82-4203.3, R.C.M. 1947, is amended to read as follows:

"82-4203.3. Meetings. The committee shall meet as often as may be necessary, during and between legislative sessions. Committee members shall be reimbursed from the appropriation to the legislative council for their ~~actual and necessary~~ expenses incurred as a result of interim meetings~~,~~ including mileage as allowed under 59-501, actual expenses as allowed under 59-538 and 59-539, and ~~paid~~ compensation as provided by law for interim standing committees."

Section 7. Section 82-4203.4, R.C.M. 1947, is amended to read as follows:

"82-4203.4. Appointment of employees and consultants. The administrative code committee may ~~appoint~~ retain whatever employees, consultants, or counsel as are necessary to carry out the provisions of this ~~act~~ part and to advise the publisher in relation to the text and legal authority of the material published in the register or the code, within the limitations of legislative appropriations."

Section 8. Section 82-4203.5, R.C.M. 1947, is amended to read as follows:

"82-4203.5. Powers of the committee. (1) The committee shall review all proposed rules ~~referred to it under section 82-4204~~ filed with the administrative code commissioner and may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule when a rule-making hearing will not be held in accordance with the provisions of ~~section~~ 82-4204;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rule-making hearing; or

(c) ~~request~~ require that a rule-making hearing be held in accordance with the provision of ~~section~~ 82-4204.

(2) The committee shall prepare a report to the legislature at least once each biennium and may recommend

amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in ~~section~~ 82-4203.1."

Section 9. There is a new R.C.M. section, to be codified within the Montana Administrative Procedure Act, that reads as follows:

Administrative code commissioner — appointment, duties, and authority. (1) There is created within the office of secretary of state the office of administrative code commissioner.

(2) The administrative code commissioner shall be appointed by and subject to the general supervision and policy of the secretary of state.

(3) The administrative code commissioner may prescribe a format, style, and arrangement for rules which are filed pursuant to this part and may refuse to accept the filing of any rule that is not in compliance therewith. The commission shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules) which shall be open to public inspection and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the administrative code commissioner may require the payment of the cost of providing such copies.

(4) The administrative code commissioner shall publish

all notices, rules, and interpretations filed with him, at least once a month or as directed by the administrative code committee, in a publication called the Montana administrative code register. He shall send the register without charge to each person listed in 82-4206(5) and to each member of the legislature requesting the same. He shall send the register to any other person who pays a subscription fee which he shall fix in consultation with the administrative code committee.

(5) The administrative code commissioner shall deposit all fees he collects in the general fund.

(6) The administrative code commissioner may charge agencies a filing fee for material to be published in the code or register based on an estimated cost of printing, which he shall fix in consultation with the administrative code committee.

Section 10. Section 82-4204, R.C.M. 1947, is amended to read as follows:

"82-4204. Adoption, — amendment, or repeal of rules — emergency rules. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(a) ~~Give~~ give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, rationale for the intended

action, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the ~~secretary of state~~ administrative code commissioner for publication in the Montana administrative register as provided in ~~section~~ 82-4206(2) and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least ~~twenty (20)~~ 30 days in advance of the agency's intended action. If any statute ~~shall provide~~ provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case ~~shall~~ may the notice period be less than ~~twenty (20)~~ 30 days or more than 6 months.

(b) ~~Afford~~ afford interested persons at least 20 days' notice of a hearing and ~~fourteen (14)~~ 20 days to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either ~~ten per cent (10%)~~ or ~~twenty-five (25)~~ of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, or by an association having not less than ~~twenty-five (25)~~ members who will be directly affected. An ~~interested person may file a written request with the agency~~

~~to extend a hearing date up to twenty (20) days~~ agency may continue a hearing date for cause. Contested case procedures need not be followed in hearings held pursuant to this section. ~~Where~~ If a hearing is otherwise required by statute, nothing herein ~~shall be deemed to alter~~ alters that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency~~, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter,~~ shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

~~(c) Befor each rule proposed to be adopted, following compliance with paragraphs (a) and (b), to the administrative code committee of the legislature.~~

(2) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than ~~twenty (20)~~ days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than ~~one hundred and twenty (120)~~ days, but the adoption of an identical rule under subsections (1)(a) and

(1)(b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare ~~shall be~~ is subject to judicial review.

(3) No rule ~~adopted after the effective date of this act shall be~~ is valid unless adopted in substantial compliance with subsections (1) ~~and~~ or (2) of this section.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this ~~act~~ part.

(5) Rules ~~shall~~ may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its

rules to determine if any new rule should be adopted or any existing rule should be modified or repealed."

Section 11. There is a new R.C.M. section to be codified within the Montana Administrative Procedure Act, that reads as follows:

Authority for rules. (1) Except as provided in 82-4203, nothing in this part confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule. To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(2) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Section 12. Section 82-4205, R.C.M. 1947, is amended to read as follows:

"82-4205. Filing of rules — effective date of rules. ~~(1) On or before the 60th day following the effective date of this act, each agency shall file with the secretary of state a certified copy of each rule adopted by it on or~~

~~before the effective date of this act and remaining in effect. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect.~~

~~(2)~~ Each agency shall file with the ~~secretary of state~~ administrative code commissioner a ~~certified~~ copy of each rule adopted by it ~~subsequent to the effective date of this act~~. Each rule shall become effective ~~ten (10) days~~ after publication in the Montana administrative register ~~or code~~ as provided in ~~section 6 [82-4206] of this act~~, except that:

~~(a)~~ (1) ~~If~~ if a later date is required by statute or specified in the rule, the later date shall be the effective date~~.~~;

~~(b)~~ (2) ~~Subject~~ subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the ~~secretary of state,~~ administrative code commissioner or at a stated date ~~less than ten (10) days~~ following publication in the Montana administrative ~~code or~~ register, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

~~(3) The secretary of state may prescribe a format, style and arrangement for rules which are filed pursuant to this act and may refuse to accept the filing of any rule that is not in substantial compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.~~"

Section 13. Section 82-4206, R.C.M. 1947, is amended to read as follows:

"82-4206. Publication and distribution of rules and notices. (1) The ~~secretary of state~~ administrative code commissioner shall~~, as soon as is practicable after the effective date of this act,~~ compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this ~~act~~ part in a publication which shall be known as the ~~Montana administrative code~~ administrative rules of Montana (herein referred to as the code). ~~The code shall be printed or otherwise duplicated, in looseleaf form.~~ The ~~secretary of state~~ administrative code commissioner shall supplement, revise, and publish the code, or any part thereof, as often as he ~~deems~~ considers necessary. He may include such

editorial notes, cross references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to the code at such times and in such form as he considers appropriate.

(2) The ~~secretary of state~~ administrative code committee shall each month or at more frequent intervals compile and publish the Montana administrative register (herein referred to as the register). The register shall contain ~~two (2)~~ three sections, a rules section, ~~and~~ a notice section, and an interpretation section.

(a) The rules section of the register shall contain all rules filed ~~with the secretary of state~~ since the compilation and publication of the preceding issue of the register~~, and in the case of the first issue, since the effective date of this act, except that nothing herein shall require that rules filed pursuant to section 5 (1) [82-4205 (1)] be published in the register. This section of the register shall be printed or duplicated in the same style as the code and shall be set up so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code~~ together with the concise statement of reasons required under 82-4204(1)(b).

(b) The notice section of the register shall contain all rule-making notices filed with the ~~secretary of state~~

administrative code commissioner pursuant to ~~section 4 [82-4204] of this act~~ since the compilation and publication of the preceding register~~, and in the case of the first issue of the register, since the effective date of this act. This section shall be printed or duplicated in such manner as to make it easily distinguishable from the rules section of the register and so that separate copies of the notice section can be provided to any person upon request to the secretary of state. The secretary of state may require the payment of the cost of providing such copies.~~

(c) The interpretation section of the register shall contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

~~(c)~~ (d) Each issue of the register shall contain ~~a title page with the name "Montana administrative register,"~~ the issue number and date of the register~~,~~ and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The ~~secretary of state~~ administrative code commissioner may include ~~in~~ with the register ~~instructions or~~ information to help the user in ~~correctly making insertions or deletions in the code and to keep the code current~~ relating the register to the Montana administrative code.

(3) The ~~secretary of state~~ administrative code

commissioner, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule ~~in printed or duplicated form is~~ merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency, and if the code or register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained.

(4) The code shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the ~~secretary of state~~ administrative code commissioner for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications shall be paid by the agency.

(5) The ~~secretary of state~~ administrative code commissioner shall distribute copies of the code, and supplements or revisions thereto ~~and the register~~ without charge to the following:

(a) ~~Attorney~~ attorney general, one ~~(1)~~ copy;

(b) ~~Clerk~~ clerk of each court of record of this state, one ~~(1)~~ copy;

(c) ~~Clerk~~ clerk of United States district court for the district of Montana, one ~~(1)~~ copy;

(d) ~~Clerk~~ clerk of United States court of appeals for the ninth circuit, one ~~(1)~~ copy;

(e) ~~Each~~ each county clerk of this state, for use of county officials and the public, one ~~(1)~~ copy~~;~~ , which may be maintained in a public library in the county seat or in the county offices;

(f) ~~State~~ state law library, one ~~(1)~~ copy;

(g) ~~State~~ state historical society, one ~~(1)~~ copy;

(h) ~~Each~~ each unit of the ~~university of Montana~~ Montana university system, one ~~(1)~~ copy;

(i) ~~Law~~ law library of the university of Montana, one ~~(1)~~ copy;

(j) ~~Montana~~ legislative council, three ~~(3)~~ copies;

(k) ~~Library~~ library of congress, one ~~(1)~~ copy;

(l) state library, one copy, ~~State law library, for such exchanges as it may establish with libraries of other states, not to exceed fifty (50) copies;~~

~~Law library of the university of Montana, for such exchanges as it may establish with institutions of higher education in other states, not to exceed fifty (50) copies.~~

(6) The ~~secretary of state~~ administrative code commissioner, clerk of each court of record in the state, clerk of each county in the state, and the librarians for

editorial notes, cross references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to the code at such times and in such form as he considers appropriate.

(2) The ~~secretary of state~~ administrative code committee shall each month or at more frequent intervals compile and publish the Montana administrative register (herein referred to as the register). The register shall contain ~~two (2)~~ three sections, a rules section, ~~and~~ a notice section, and an interpretation section.

(a) The rules section of the register shall contain all rules filed ~~with the secretary of state~~ since the compilation and publication of the preceding issue of the register~~, and in the case of the first issue, since the effective date of this act, except that nothing herein shall require that rules filed pursuant to section 5 (1) [82-4205 (1)] be published in the register. This section of the register shall be printed or duplicated in the same style as the code and shall be set up so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code~~ together with the concise statement of reasons required under 82-4204(1)(b).

(b) The notice section of the register shall contain all rule-making notices filed with the ~~secretary of state~~

administrative code commissioner pursuant to ~~section 4 [82-4204] of this act~~ since the compilation and publication of the preceding register~~, and in the case of the first issue of the register, since the effective date of this act. This section shall be printed or duplicated in such manner as to make it easily distinguishable from the rules section of the register and so that separate copies of the notice section can be provided to any person upon request to the secretary of state. The secretary of state may require the payment of the cost of providing such copies.~~

(c) The interpretation section of the register shall contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

~~(c)~~ (d) Each issue of the register shall contain ~~a title page with the name "Montana administrative register,"~~ the issue number and date of the register~~,~~ and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The ~~secretary of state~~ administrative code commissioner may include ~~in~~ with the register ~~instructions or~~ information to help the user in ~~correctly making insertions or deletions in the code and to keep the code current~~ relating the register to the Montana administrative code.

(3) The ~~secretary of state~~ administrative code

commissioner, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule ~~in printed or duplicated form is~~ merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency, and if the code or register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained.

(4) The code shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the ~~secretary of state~~ administrative code commissioner for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications shall be paid by the agency.

(5) The ~~secretary of state~~ administrative code commissioner shall distribute copies of the code, and supplements or revisions thereto ~~and the register~~ without charge to the following:

(a) ~~Attorney~~ attorney general, one ~~(1)~~ copy;

(b) ~~Clerk~~ clerk of each court of record of this state, one ~~(1)~~ copy;

(c) ~~Clerk~~ clerk of United States district court for the district of Montana, one ~~(1)~~ copy;

(d) ~~Clerk~~ clerk of United States court of appeals for the ninth circuit, one ~~(1)~~ copy;

(e) ~~Each~~ each county clerk of this state, for use of county officials and the public, one ~~(1)~~ copy~~;~~ , which may be maintained in a public library in the county seat or in the county offices;

(f) ~~State~~ state law library, one ~~(1)~~ copy;

(g) ~~State~~ state historical society, one ~~(1)~~ copy;

(h) ~~Each~~ each unit of the ~~university of Montana~~ Montana university system, one ~~(1)~~ copy;

(i) ~~Law~~ law library of the university of Montana, one ~~(1)~~ copy;

(j) ~~Montana~~ legislative council, three ~~(3)~~ copies;

(k) ~~Library~~ library of congress, one ~~(1)~~ copy;

(l) state library, one copy, ~~State law library, for such exchanges as it may establish with libraries of other states, not to exceed fifty (50) copies;~~

~~Law library of the university of Montana, for such exchanges as it may establish with institutions of higher education in other states, not to exceed fifty (50) copies.~~

(6) The ~~secretary of state~~ administrative code commissioner, clerk of each court of record in the state, clerk of each county in the state, and the librarians for

the state law library and the university of Montana law library shall maintain a complete, current set of the code, including supplements or revisions thereto ~~and additions or changes published in the register~~. Such persons shall also maintain ~~a file of rule-making notices published in~~ the register issues published during the preceding ~~two (2)~~ years. The ~~secretary of state~~ administrative code commissioner shall also maintain a permanent ~~register of rule-making notices~~ set of the registers.

~~(6)~~ (7) The ~~secretary of state~~ administrative code commissioner shall make copies of and subscriptions to the code, and supplements or revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

~~(7)~~ (8) The ~~secretary of state~~ administrative code commissioner shall determine the cost of supplying copies of the code, and supplements or revisions thereto and the register. Such cost shall be the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code, and supplements or revisions thereto and the register.

~~(8) All fees collected by the secretary of state shall be deposited to the general fund.~~"

Section 14. Section 82-4207, R.C.M. 1947, is amended to read as follows:

"82-4207. Petition for adoption of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within ~~sixty (60)~~ days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with ~~section~~ 82-4204."

Section 15. Section 82-4208, R.C.M. 1947, is amended to read as follows:

"82-4208. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this ~~act~~ part."

Section 16. Section 82-4212, R.C.M. 1947, is amended to read as follows:

"82-4212. Examination of evidence by agency — proposed orders. When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if

adverse to a party to the proceeding other than the agency itself, ~~shall~~ may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing ~~or one who has read the record~~ unless he becomes unavailable to the agency. If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties. The parties may waive compliance with this section by written stipulation."

Section 17. Section 82-4213, R.C.M. 1947, is amended to read as follows:

"82-4213. Final orders — notification. (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the

findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. Each conclusion of law shall be supported by authority or by a reasoned opinion.

(2) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under ~~section 18 [82-4218], issued after the effective date of this act~~. No such agency decision or order ~~shall be~~ is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order."

Section 18. Section 82-4215, R.C.M. 1947, is amended to read as follows:

"82-4215. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or amendment of a license is required by law to

be preceded by notice and opportunity for hearing, the provisions of this ~~act~~ part concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) No revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined."

Section 19. Section 82-4216, R.C.M. 1947, is amended to read as follows:

"82-4216. Judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this ~~act~~ part. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency, unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within ~~thirty (30)~~ days after service of the final decision of the agency, or if a rehearing is requested, within ~~thirty (30)~~ days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal

place of business~~,~~ or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in subsection (7) of this section upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant~~,~~ or the reviewing court may order~~,~~ a stay upon terms which it ~~deems~~ considers proper.

(4) Within ~~thirty (30)~~ days after the service of the petition~~,~~ or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence~~,~~ and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency~~,~~ not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court ~~shall~~ may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) because findings of fact, upon issues essential to the decision, were not made although requested."

Section 20. Section 82-4217, R.C.M. 1947, is amended to read as follows:

"82-4217. Appeals. An aggrieved party may obtain review of a final judgment of a district court under this ~~act~~ part by appeal to the supreme court within ~~sixty (60)~~ days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process~~.~~:

(1) ~~If~~ if appeal is taken from a judgment of the district court affirming an agency decision, the agency

decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for ~~twenty (20)~~ days from the date of filing of the notice~~.~~;

(2) ~~If~~ if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise."

Section 21. Section 82-4220, R.C.M. 1947, is amended to read as follows:

"82-4220. Subpoenas and enforcement — compelling testimony. (1) An agency conducting any proceeding subject to this ~~act~~ part shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided

by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party, or to compel the giving of testimony ~~deemed~~ considered material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

(3) Each agency shall provide in its rules of practice for discovery prior to a contested case hearing, unless the applicable statute provides for a trial de novo on appeal to

the district court."

Section 22. Section 82-4221, R.C.M. 1947, is amended to read as follows:

"82-4221. Representation. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this ~~act~~ part shall not be construed as requiring an agency to furnish counsel to any such person."

Section 23. Section 82-4222, R.C.M. 1947, is amended to read as follows:

"82-4222. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this ~~act~~ part and in proceedings for judicial review thereof, shall be as prescribed for civil actions in the district courts."

Section 24. Section 82-4223, R.C.M. 1947, is amended to read as follows:

"82-4223. Construction and effect. Nothing in this ~~act~~ part shall be ~~deemed~~ considered to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be ~~deemed~~ considered to supersede or modify any provision of this ~~act~~ part, whether

by implication or otherwise, except to the extent that such legislation shall do so expressly."

Section 25. Section 82-4227, R.C.M. 1947, is amended to read as follows:

"82-4227. Definitions. As used in this ~~act~~ chapter:

(1) "~~Agency~~ agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "~~Rule~~ rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings as to the applicability of any statutory provision or of any rule;

(c) ~~intra-agency~~ intraagency memoranda.

(3) "agency action" means the whole or a part of an agency rule, license, order, or contract or the equivalent or denial thereof."

Section 26. Section 82-4228, R.C.M. 1947, is amended to read as follows:

"82-4228. Agency requirements. (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final ~~decision is made on the adoption of a rule or policy, awarding a contract, granting or denying a permit, license or change of rate~~ agency action is taken that is of significant interest to the public.

(2) An agency shall be ~~deemed~~ considered to have complied with the notice provisions of this ~~act~~ section if:

(a) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 69, chapter 65;

(b) a proceeding is held as required by the Montana Administrative Procedure Act~~, Title 82, chapter 42~~;

(c) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(d) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision prior to a final decision on a matter.

(3) Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(4) The provisions of this ~~act~~ section do not apply to:

(a) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(b) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(c) a decision involving no more than a ministerial act.

(5) Each agency shall adopt guidelines for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request."

Section 27. Section 82-4229, R.C.M. 1947, is amended to read as follows:

"82-4229. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under ~~this act~~ 82-4228 upon petition of any person whose rights have been prejudiced, made within ~~thirty (30)~~ days of the date of the decision."

Section 28. Section 82A-107, R.C.M. 1947, is amended to read as follows:

"82A-107. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) ~~Supervise~~ supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this title or other law~~.~~;

(b) ~~Establish~~ establish the policy to be followed by the department and employees~~.~~;

(c) ~~Compile~~ compile and submit reports and budgets for

the department as required by law or requested by the governor~~.~~;

(d) ~~Provide~~ provide the governor with any information that he requests at any time on the operation of the department~~.~~;

(e) ~~Represent~~ represent the department in communications with the governor~~.~~;

(f) ~~Prescribe~~ prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) ~~Subject~~ subject to the approval of the governor, establish the internal organizational structure of the department, and allocate the functions of the department to

units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with ~~section~~ 82A-104(2).

(h) ~~Subject~~ subject to law~~,~~ and the state merit system, if applicable, establish and make appointments to necessary subordinate positions~~,~~ and abolish unnecessary positions~~.~~;

(i) ~~Maintain~~ maintain a central office in Helena for the department~~,~~ and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) ~~Subject~~ subject to law~~,~~ and the state merit system, if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department~~.~~;

(b) ~~Delegate~~ delegate any of the functions vested in the department head to subordinate employees~~.~~;

(c) ~~Apply~~ apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions~~.~~;

(d) ~~Enter~~ enter into agreements with federal, state, and local agencies necessary to carry out the department's functions."

Section 29. There is a new R.C.M. section that reads as follows:

Transition schedule — public education rules. Rules and policies of the board of public education and the state superintendent of public instruction are subject to 82-4204(3) on and after October 1, 1977. Any such rules and policies in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1).

Section 30. There is a new R.C.M. section that reads as follows:

Transition schedule — administration rules. Rules and policies of the department of administration not exempted from the Montana Administrative Procedure Act are subject to 82-4204(3) on and after October 1, 1977. The director of administration shall discontinue publication of the Montana administrative manual after that date but may continue the second and third volumes of that manual under the title of Statewide Budgeting and Accounting Manual. The director may file any rules published in the first volume of the Montana administrative manual as of January 1, 1977, with the

administrative code commissioner before October 1, 1977, without being subject to the notice and hearing requirements of 82-4204(1). The administrative code commissioner shall arrange with the director of administration for publication of the rules of the department of administration in a volume separable from the administrative rules of Montana for the convenience of state offices which do not wish to acquire the entire code.

Section 31. There is a new R.C.M. section that reads as follows:

Transition schedule — institutions rules. Rules and policies of the department of institutions relating to patients or inmates in a mental, medical, or eleemosynary institution are subject to 82-4204(3) on and after October 30, 1977. Any such rules in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1).

-End-

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT THE BUILDING AND APPURTENANT LAND OF CERTAIN COMMUNITY SERVICE ORGANIZATIONS FROM PROPERTY TAXATION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Certain community services buildings exempt. (1) The building and appurtenant land, not exceeding 1 acre, of a nonprofit community service organization is exempt from property taxation, except as provided in subsection (3), if such organization:

(a) is a lodge of a nationally recognized fraternal organization and does not sell food or beverages under license from the state of Montana;

(b) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities and does not furnish living accommodations to such citizens; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of social and rehabilitation services; or

(c) furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for meetings and entertainments in a municipality of less than 1,500 population in the last official census.

(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, 1976.

(3) A building and lot exempted under this section shall be appraised, assessed, and subject to levies for any

special improvement district if the special improvement directly benefits the building or lot.

-End-

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO ADMINISTRATIVE PROCEDURE; AMENDING SECTIONS 82-4201 THROUGH 82-4208, 82-4212, 82-4213, 82-4215, 82-4216, 82-4217, 82-4220 THROUGH 82-4223, 82-4227 THROUGH 82-4229, AND 82A-107, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 32. Section 82-4201, R.C.M. 1947, is amended to read as follows:

"82-4201. Short title. This ~~act~~ part ~~(sections~~ 82-4201 through 82-4225) shall be known and may be cited as the "Montana Administrative Procedure Act"."

Section 33. Section 82-4202, R.C.M. 1947, is amended to read as follows:

"82-4202. Definitions. For purposes of this ~~act~~ part, the following definitions apply:

(1) "Agency" means any ~~board, bureau, commission, department, authority or officer~~ agency, as defined in 82-4227, of the state government ~~authorized by law to make~~

~~rules and to determine contested cases~~, except that the provisions of this ~~act~~ part ~~shall~~ do not apply to the following:

~~(a) the legislature and any branch, committee or officer thereof;~~

~~(b) the judicial branches and any committee or officer thereof;~~

~~(c) the governor, except that an agency otherwise covered by this act shall not be exempt because the governor has been designated as a member thereof;~~

~~(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack;~~

~~(e)~~ (a) the state board of pardons, except that ~~said~~ the board shall be subject to the requirements of ~~section 3~~ ~~[~~82-4203~~]~~ and ~~5 [~~82-4205~~]~~ ~~of this act~~ and its rules shall be published in the Montana administrative code and register;

~~(f)~~ (b) the supervision and administration of any penal~~, mental, medical or eleemosynary~~ institution with regard to the ~~admission, release,~~ institutional supervision, custody, control, care, or treatment of ~~inmates,~~ prisoners ~~or patients~~;

~~(g)~~ (c) ~~the administration and management of educational institutions;~~ the board of regents and the Montana university system;

~~(h)~~ (d) the financing, construction, and maintenance of public works.

(2) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. Substantive rules are either legislative rules, which if adopted in accordance with this part and under expressly delegated authority have the force of law and when not so adopted are invalid, or adjective or interpretive rules, which may be adopted in accordance with this part and under express or implied authority to codify an interpretation of a statute although such interpretation lacks the force of law. The term includes the amendment or repeal of a prior rule~~,~~ but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to ~~section 18~~ ~~[~~82-4218~~]~~ ~~of this act~~;

~~(c) intra agency memoranda;~~

~~(d)~~ (c) rules relating to the use of public works, facilities, streets, and highways~~,~~ when the substance of such rules is indicated to the public by means of signs or signals;

~~(e)~~ (d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules, and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

~~(f)~~ (e) rules ~~relating to personnel standards, job classifications or salary ranges for agency employees;~~ implementing the state personnel classification plan, the state wage and salary plan, or the state wide budgeting and accounting system;

~~(g)~~ (f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with ~~section 10 [82-4210] of this act~~ 82-4205 and shall be published in the Montana administrative code ~~and register~~.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes, but is not restricted to, rate making, price fixing, and licensing.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(6) "Party" means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public organization of any character other than an agency."

Section 34. Section 82-4203, R.C.M. 1947, is amended to read as follows:

"82-4203. Rules describing agency organization and procedures — public inspection of rules — model rules. (1) In addition to other rule-making requirements imposed by law, each agency shall:

(a) ~~Adopt~~ adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. The notice and hearing requirements contained in ~~section~~ 82-4204 do not apply to adoption of a rule relating to a description of its organization.

(b) ~~Adopt~~ adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency~~.~~;

(c) ~~Make~~ make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions~~.~~;

(d) ~~Upon~~ upon request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(2) No agency rule ~~shall be~~ is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

(3) The attorney general shall prepare~~, as soon as is practicable after the passage of this act,~~ a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of ~~section~~ 82-4203(1). The attorney general shall add to, amend, or revise the model rules from time to time as he ~~shall deem~~ considers necessary for the proper guidance of agencies. The model rules, and

additions, amendments, or revisions thereto, shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules ~~shall~~ does not relieve the agency from following the rule-making procedures required by this ~~act~~ part."

Section 35. Section 82-4203.1, R.C.M. 1947, is amended to read as follows:

"82-4203.1. Legislative review of rules. (1) ~~The secretary of state shall, on the date the legislature convenes in regular session in 1974, transmit to both the senate and house of representatives one (1) copy of all rules in the Montana administrative code, not including superseded or repealed rules.~~

~~(2) The secretary of state shall, on the date the legislature convenes in each regular session after 1974, transmit to both the senate and house of representatives one (1) copy of all rules, which are in the Montana administrative code, adopted or amended by agencies since the convening of the previous regular session.~~

~~(3)~~ The legislature may, by joint resolution, repeal any rule in the Montana administrative code. If a rule is repealed, the legislature shall, in the joint resolution, state its objections to the repealed rule. If an agency

adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

~~(4)~~ (2) The legislature may also, by joint resolution, direct a change to be made in any rule in the Montana administrative code or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall, in the joint resolution, state the nature of the change or the additional rule to be made~~,~~ and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.

~~(5)~~ (3) Rules made by agencies~~,~~ and changes in rules directed by the legislature~~,~~ under subsection ~~(4)~~ (2) of this section, shall conform and be pursuant to statutory authority."

Section 36. Section 82-4203.2, R.C.M. 1947, is amended to read as follows:

"82-4203.2. Administrative code committee — appointment and term of members — officers. The administrative code committee consists of four ~~(4)~~ members of the senate and four ~~(4)~~ members of the house of

representatives appointed before the ~~sixtieth~~ 60th legislative day of the regular session in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. No more than two ~~(2)~~ of the appointees of each house may be members of the same political party. A member of the committee shall serve until his term of office as a legislator ends or until the end of the ~~sixtieth~~ 60th legislative day of the session of the biennium following his appointment or until his successor is appointed, whichever occurs first. The committee shall elect one ~~(1)~~ of its members as chairman and such other officers as it ~~deems~~ considers necessary."

Section 37. Section 82-4203.3, R.C.M. 1947, is amended to read as follows:

"82-4203.3. Meetings. The committee shall meet as often as may be necessary, during and between legislative sessions. Committee members shall be reimbursed from the appropriation to the legislative council for their ~~actual and necessary~~ expenses incurred as a result of interim meetings~~,~~ including mileage as allowed under 59-501, actual expenses as allowed under 59-538 and 59-539, and ~~paid~~ compensation as provided by law for interim standing

committees."

Section 38. Section 82-4203.4, R.C.M. 1947, is amended to read as follows:

"82-4203.4. Appointment of employees and consultants. The administrative code committee may ~~appoint~~ retain whatever employees, consultants, or counsel as are necessary to carry out the provisions of this ~~act~~ part and to advise the publisher in relation to the text and legal authority of the material published in the register or the code, within the limitations of legislative appropriations."

Section 39. Section 82-4203.5, R.C.M. 1947, is amended to read as follows:

"82-4203.5. Powers of the committee. (1) The committee shall review all proposed rules ~~referred to it under section 82-4204~~ filed with the administrative code commissioner and may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule when a rule-making hearing will not be held in accordance with the provisions of ~~section~~ 82-4204;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rule-making hearing; or

(c) ~~request~~ require that a rule-making hearing be held

in accordance with the provision of ~~section~~ 82-4204.

(2) The committee shall prepare a report to the legislature at least once each biennium and may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in ~~section~~ 82-4203.1."

Section 40. There is a new R.C.M. section, to be codified within the Montana Administrative Procedure Act, that reads as follows:

Administrative code commissioner — appointment, duties, and authority. (1) There is created within the office of secretary of state the office of administrative code commissioner.

(2) The administrative code commissioner shall be appointed by and subject to the general supervision and policy of the secretary of state.

(3) The administrative code commissioner may prescribe a format, style, and arrangement for rules which are filed pursuant to this part and may refuse to accept the filing of any rule that is not in compliance therewith. The commission shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules) which shall be open to public inspection and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the administrative

code commissioner may require the payment of the cost of providing such copies.

(4) The administrative code commissioner shall publish all notices, rules, and interpretations filed with him, at least once a month or as directed by the administrative code committee, in a publication called the Montana administrative code register. He shall send the register without charge to each person listed in 82-4206(5) and to each member of the legislature requesting the same. He shall send the register to any other person who pays a subscription fee which he shall fix in consultation with the administrative code committee.

(5) The administrative code commissioner shall deposit all fees he collects in the general fund.

(6) The administrative code commissioner may charge agencies a filing fee for material to be published in the code or register based on an estimated cost of printing, which he shall fix in consultation with the administrative code committee.

Section 41. Section 82-4204, R.C.M. 1947, is amended to read as follows:

"82-4204. Adoption, — amendment, or repeal of rules — emergency rules. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(a) ~~Give~~ give written notice of its intended action.

The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the ~~secretary of state~~ administrative code commissioner for publication in the Montana administrative register as provided in ~~section~~ 82-4206(2) and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least ~~twenty (20)~~ 30 days in advance of the agency's intended action. If any statute ~~shall provide~~ provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case ~~shall~~ may the notice period be less than ~~twenty (20)~~ 30 days or more than 6 months.

(b) ~~Afford~~ afford interested persons at least 20 days' notice of a hearing and ~~fourteen (14)~~ 28 days to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either ~~ten per cent (10%)~~ or ~~twenty five (25)~~ of the persons who will be directly affected by the proposed rule, by a governmental subdivision

or agency, or by an association having not less than ~~twenty-five (25)~~ members who will be directly affected. An ~~interested person may file a written request with the agency to extend a hearing date up to twenty (20) days~~ agency may continue a hearing date for cause. Contested case procedures need not be followed in hearings held pursuant to this section. ~~Where~~ If a hearing is otherwise required by statute, nothing herein ~~shall be deemed to alter~~ alters that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency~~, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter,~~ shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

~~(c) Refer each rule proposed to be adopted, following compliance with paragraphs (a) and (b), to the administrative code committee of the legislature.~~

(2) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than ~~twenty (20)~~ days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an

emergency rule. The rule may be effective for a period not longer than ~~one hundred and twenty (120)~~ days, but the adoption of an identical rule under subsections (1)(a) and (1)(b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare ~~shall be~~ is subject to judicial review.

(3) No rule ~~adopted after the effective date of this act shall be~~ is valid unless adopted in substantial compliance with subsections (1) ~~and~~ or (2) of this section.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this ~~act~~ part.

(5) Rules ~~shall~~ may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each

rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed."

Section 42. There is a new R.C.M. section to be codified within the Montana Administrative Procedure Act, that reads as follows:

Authority for rules. (1) Except as provided in 82-4203, nothing in this part confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule. To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(2) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Section 43. Section 82-4205, R.C.M. 1947, is amended to read as follows:

"82-4205. Filing of rules — effective date of rules.

~~(1) On or before the 60th day following the effective date of this act, each agency shall file with the secretary of state a certified copy of each rule adopted by it on or before the effective date of this act and remaining in effect. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect.~~

~~(2)~~ Each agency shall file with the ~~secretary of state~~ administrative code commissioner a ~~certified~~ copy of each rule adopted by it ~~subsequent to the effective date of this act~~. Each rule shall become effective ~~ten (10) days~~ after publication in the Montana administrative register ~~or code~~ as provided in ~~section 6 [82-4206] of this act~~, except that:

~~(a)~~ (1) ~~If~~ if a later date is required by statute or specified in the rule, the later date shall be the effective date~~.~~;

~~(b)~~ (2) ~~Subject~~ subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the ~~secretary of state,~~ administrative code commissioner or at a stated date ~~less than ten (10) days~~ following publication in the Montana administrative ~~code or~~ register~~,~~ if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate

measures to make emergency rules known to every person who may be affected by them.

~~(3) The secretary of state may prescribe a format, style and arrangement for rules which are filed pursuant to this act and may refuse to accept the filing of any rule that is not in substantial compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statue, the secretary of state may require the payment of the cost of providing such copies.~~"

Section 44. Section 82-4206, R.C.M. 1947, is amended to read as follows:

"82-4206. Publication and distribution of rules and notices. (1) The ~~secretary of state~~ administrative code commissioner shall~~, as soon as is practicable after the effective date of this act,~~ compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this ~~act~~ part in a publication which shall be known as the ~~Montana administrative code~~ administrative rules of Montana (herein referred to as the code). ~~The code shall be printed or otherwise duplicated, in looseleaf form.~~ The ~~secretary of~~

~~state~~ administrative code commissioner shall supplement, revise, and publish the code, or any part thereof, as often as he ~~deems~~ considers necessary. He may include such editorial notes, cross references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to the code at such times and in such form as he considers appropriate.

(2) The ~~secretary of state~~ administrative code committee shall each month or at more frequent intervals compile and publish the Montana administrative register (herein referred to as the register). The register shall contain ~~two (2)~~ three sections, a rules section, ~~and~~ a notice section, and an interpretation section.

(a) The rules section of the register shall contain all rules filed ~~with the secretary of state~~ since the compilation and publication of the preceding issue of the register~~, and in the case of the first issue, since the effective date of this act, except that nothing herein shall require that rules filed pursuant to section 5 (1) [82-4205 (1)] be published in the register. This section of the register shall be printed or duplicated in the same style as the code and shall be set up so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code~~ together with the concise statement of reasons

required under 82-4204(1)(b).

(b) The notice section of the register shall contain all rule-making notices filed with the ~~secretary of state~~ administrative code commissioner pursuant to ~~section 4 [82-4204] of this act~~ since the compilation and publication of the preceding register~~, and in the case of the first issue of the register, since the effective date of this act, this section shall be printed or duplicated in such manner as to make it easily distinguishable from the rules section of the register and so that separate copies of the notice section can be provided to any person upon request to the secretary of state. The secretary of state may require the payment of the cost of providing such copies~~.

(c) The interpretation section of the register shall contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

~~(c)~~(d) Each issue of the register shall contain ~~a title page with the name "Montana administrative register,"~~ the issue number and date of the register~~,~~ and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The ~~secretary of state~~ administrative code commissioner may include ~~in~~ with the register ~~instructions or~~ information to help the user in ~~correctly making insertions or deletions in~~

~~the code and to keep the code current~~ relating the register to the Montana administrative code.

(3) The ~~secretary of state~~ administrative code commissioner, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule ~~in printed or duplicated form is~~ merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency~~,~~ and if the code or register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained.

(4) The code shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the ~~secretary of state~~ administrative code commissioner for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications shall be paid by the agency.

(5) The ~~secretary of state~~ administrative code commissioner shall distribute copies of the code~~,~~ and supplements or revisions thereto ~~and the register~~ without charge to the following:

(a) ~~Attorney~~ attorney general, one ~~(1)~~ copy;

(b) ~~Clerk~~ clerk of each court of record of this state, one ~~(1)~~ copy;

(c) ~~Clerk~~ clerk of United States district court for the district of Montana, one ~~(1)~~ copy;

(d) ~~Clerk~~ clerk of United States court of appeals for the ninth circuit, one ~~(1)~~ copy;

(e) ~~Each~~ each county clerk of this state, for use of county officials and the public, one ~~(1)~~ copy~~;~~ , which may be maintained in a public library in the county seat or in the county offices;

(f) ~~State~~ state law library, one ~~(1)~~ copy;

(g) ~~State~~ state historical society, one ~~(1)~~ copy;

(h) ~~Each~~ each unit of the ~~university of Montana~~ Montana university system, one ~~(1)~~ copy;

(i) ~~Law~~ law library of the university of Montana, one ~~(1)~~ copy;

(j) ~~Montana~~ legislative council, three ~~(3)~~ copies;

(k) ~~Library~~ library of congress, one ~~(1)~~ copy;

(l) state library, one copy. ~~State law library, for such exchanges as it may establish with libraries of other states, not to exceed fifty (50) copies;~~

~~Law library of the university of Montana, for such exchanges as it may establish with institutions of higher education in other states, not to exceed fifty (50) copies.~~

(6) The ~~secretary of state~~ administrative code commissioner, clerk of each court of record in the state, clerk of each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of the code, including supplements or revisions thereto ~~and additions or changes published in the register~~. Such persons shall also maintain ~~a file of rule making notices published in~~ the register issues published during the preceding ~~two (2)~~ years. The ~~secretary of state~~ administrative code commissioner shall also maintain a permanent ~~register of rule making notices~~ set of the registers.

~~(6)~~ (7) The ~~secretary of state~~ administrative code commissioner shall make copies of and subscriptions to the code~~,~~ and supplements or revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

~~(7)~~ (8) The ~~secretary of state~~ administrative code commissioner shall determine the cost of supplying copies of the code~~,~~ and supplements or revisions thereto and the register. Such cost shall be the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code~~,~~ and supplements or revisions thereto and the

register.

~~(8) All fees collected by the secretary of state shall be deposited to the general fund.~~"

Section 45. Section 82-4207, R.C.M. 1947, is amended to read as follows:

"82-4207. Petition for adoption of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within ~~sixty (60)~~ days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with ~~section~~ 82-4204."

Section 46. Section 82-4208, R.C.M. 1947, is amended to read as follows:

"82-4208. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this ~~act~~ <u>part</u>."

Section 47. Section 82-4212, R.C.M. 1947, is amended to read as follows:

"82-4212. Examination of evidence by agency —

proposed orders. When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, ~~shall~~ <u>may</u> not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing ~~or one who has read the record~~ <u>unless he becomes unavailable to the agency. If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties</u>. The parties may waive compliance with this section by written stipulation."

Section 48. Section 82-4213, R.C.M. 1947, is amended to read as follows:

"82-4213. Final orders — notification. (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of

law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. Each conclusion of law shall be supported by authority or by a reasoned opinion.

(2) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under ~~section 18 [82-4218], issued after the effective date of this act~~. No such agency decision or order ~~shall be~~ is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order."

Section 49. Section 82-4215, R.C.M. 1947, is amended to read as follows:

"82-4215. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this ~~act~~ part concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) No revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These

proceedings shall be promptly instituted and determined."

Section 50. Section 82-4216, R.C.M. 1947, is amended to read as follows:

"82-4216. Judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this ~~act~~ part. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency, unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within ~~thirty (30)~~ days after service of the final decision of the agency, or if a rehearing is requested, within ~~thirty (30)~~ days after the

decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business, or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in subsection (7) of this section upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant, or the reviewing court may order, a stay upon terms which it ~~deems~~ considers proper.

(4) Within ~~thirty (30)~~ days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may

be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court ~~shall~~ may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of

the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) because findings of fact, upon issues essential to the decision, were not made although requested."

Section 51. Section 82-4217, R.C.M. 1947, is amended to read as follows:

"82-4217. Appeals. An aggrieved party may obtain review of a final judgment of a district court under this ~~act~~ part by appeal to the supreme court within ~~sixty (60)~~ days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion

of the judicial review process~~.~~;

(1) ~~If~~ if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for ~~twenty (20)~~ days from the date of filing of the notice~~.~~;

(2) ~~If~~ if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise."

Section 52. Section 82-4220, R.C.M. 1947, is amended to read as follows:

"82-4220. Subpoenas and enforcement — compelling testimony. (1) An agency conducting any proceeding subject to this ~~act~~ part shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The

method for service of subpoenas, witness fees, and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party, or to compel the giving of testimony ~~deemed~~ considered material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

(3) Each agency shall provide in its rules of practice for discovery prior to a contested case hearing, unless the applicable statute provides for a trial de novo on appeal to the district court."

Section 53. Section 82-4221, R.C.M. 1947, is amended to read as follows:

"82-4221. Representation. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this ~~act~~ part shall not be construed as requiring an agency to furnish counsel to any such person."

Section 54. Section 82-4222, R.C.M. 1947, is amended to read as follows:

"82-4222. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this ~~act~~ part and in proceedings for judicial review thereof~~,~~ shall be as prescribed for civil actions in the district courts."

Section 55. Section 82-4223, R.C.M. 1947, is amended to read as follows:

"82-4223. Construction and effect. Nothing in this ~~act~~ part shall be ~~deemed~~ considered to limit or repeal

requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be ~~deemed~~ considered to supersede or modify any provision of this ~~act~~ part, whether by implication or otherwise, except to the extent that such legislation shall do so expressly."

Section 56. Section 82-4227, R.C.M. 1947, is amended to read as follows:

"82-4227. Definitions. As used in this ~~act~~ chapter:

(1) "~~Agency~~ agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "~~Rule~~ rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the

organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings as to the applicability of any statutory provision or of any rule;

(c) ~~intra-agency~~ intraagency memoranda.

(3) "agency action" means the whole or a part of an agency rule, license, order, or contract or the equivalent or denial thereof."

Section 57. Section 82-4228, R.C.M. 1947, is amended to read as follows:

"82-4228. Agency requirements. (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final ~~decision is made on the adoption of a rule or policy, awarding a contract, granting or denying a permit, license or change of rate~~ agency action is taken that is of significant interest to the public.

(2) An agency shall be ~~deemed~~ considered to have complied with the notice provisions of this ~~act~~ section if:

(a) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 69, chapter 65;

(b) a proceeding is held as required by the Montana Administrative Procedure Act~~, Title 82, chapter 42~~;

(c) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(d) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision prior to a final decision on a matter.

(3) Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(4) The provisions of this ~~act~~ section do not apply to:

(a) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(b) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or

becoming a party to an administrative proceeding; or

(c) a decision involving no more than a ministerial act.

(5) Each agency shall adopt guidelines for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request."

Section 58. Section 82-4229, R.C.M. 1947, is amended to read as follows:

"82-4229. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under ~~this act~~ 82-4228 upon petition of any person whose rights have been prejudiced, made within ~~thirty (30)~~ days of the date of the decision."

Section 59. Section 82A-107, R.C.M. 1947, is amended to read as follows:

"82A-107. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) ~~Supervise~~ supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this title or other law~~.~~;

(b) ~~Establish~~ establish the policy to be followed by the department and employees~~.~~;

(c) ~~Compile~~ compile and submit reports and budgets for the department as required by law or requested by the governor~~.~~;

(d) ~~Provide~~ provide the governor with any information that he requests at any time on the operation of the department~~.~~;

(e) ~~Represent~~ represent the department in communications with the governor~~.~~;

(f) ~~Prescribe~~ prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) ~~Subject~~ subject to the approval of the governor, establish the internal organizational structure of the department, and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with ~~section~~ 82A-104(2).

(h) ~~Subject~~ subject to law~~,~~ and the state merit system, if applicable, establish and make appointments to necessary subordinate positions~~,~~ and abolish unnecessary positions~~.~~;

(i) ~~Maintain~~ maintain a central office in Helena for the department~~,~~ and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) ~~Subject~~ subject to law~~,~~ and the state merit system, if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department~~.~~;

(b) ~~Delegate~~ delegate any of the functions vested in the department head to subordinate employees~~.~~;

(c) ~~Apply~~ apply for, accept, administer, and expend

funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions~~.~~;

(d) ~~Enter~~ enter into agreements with federal, state, and local agencies necessary to carry out the department's functions."

Section 60. There is a new R.C.M. section that reads as follows:

Transition schedule — public education rules. Rules and policies of the board of public education and the state superintendent of public instruction are subject to 82-4204(3) on and after October 1, 1977. Any such rules and policies in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1).

Section 61. There is a new R.C.M. section that reads as follows:

Transition schedule — administration rules. Rules and policies of the department of administration not exempted from the Montana Administrative Procedure Act are subject to 82-4204(3) on and after October 1, 1977. The director of administration shall discontinue publication of the Montana administrative manual after that date but may continue the second and third volumes of that manual under the title of

1 Statewide Budgeting and Accounting Manual. The director may
2 file any rules published in the first volume of the Montana
3 administrative manual as of January 1, 1977, with the
4 administrative code commissioner before October 1, 1977,
5 without being subject to the notice and hearing requirements
6 of 82-4204(1). The administrative code commissioner shall
7 arrange with the director of administration for publication
8 of the rules of the department of administration in a volume
9 separable from the administrative rules of Montana for the
10 convenience of state offices which do not wish to acquire
11 the entire code.
12 Section 62. There is a new R.C.M. section that reads
13 as follows:
14 Transition schedule — institutions rules. Rules and
15 policies of the department of institutions relating to
16 patients or inmates in a mental, medical, or eleemosynary
17 institution are subject to 82-4204(3) on and after October
18 30, 1977. Any such rules in effect on January 1, 1977, may
19 be filed before October 1, 1977, for publication in the
20 administrative code without being subject to the notice and
21 hearing requirements of 82-4204(1).

-End-

_____ JOINT RESOLUTION NO. _____

INTRODUCED BY _____

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ATTORNEY GENERAL TO REVISE AND UPDATE THE MODEL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE.

WHEREAS, the Attorney General is directed by the Montana Administrative Procedure Act to prepare model rules of practice for state agencies to use as a guide in conducting administrative proceedings and to revise or amend such model rules from time to time as he considers necessary for the proper guidance of agencies; and

WHEREAS, the Attorney General adopted these model rules in 1972 and has made no revision or amendment to such rules since that time, with the exception of two minor changes proposed by the Administrative Code Committee; and

WHEREAS, experience under the Montana Administrative Procedure Act has indicated numerous aspects of administrative practice not covered by the model rules; and

WHEREAS, the model rules have not been amended to reflect amendments to the Montana Administrative Procedure Act enacted by previous legislatures, and many more amendments to the act are pending before this legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That following adjournment of this legislative session, the Attorney General is requested to review the form and content of the model rules of administrative practice and to adopt such revisions to the rules as appear to be necessary for the guidance of state agencies and the orderly conduct of administrative proceedings.

-End-

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE POSITION OF ADMINISTRATIVE LAW JUDGE AND A DIVISION OF ADMINISTRATIVE ADJUDICATION; PROVIDING FOR AN ADMINISTRATIVE LAW JUDGE TO HEAR CONTESTED CASES BEFORE PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS; APPROPRIATING MONEYS; AMENDING SECTION 82A-1604, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section that reads as follows:

Division of administrative adjudication -- appointment of administrative law judge. (1) There is a division of administrative adjudication. The division is allocated to the department of administration for administrative purposes only as prescribed in 82A-108. The division consists of one or more administrative law judges who are members of the executive branch of state government, and necessary clerical personnel employed under the state classification and pay plan.

(2) The governor shall appoint an administrative law judge for a term of 6 years in the manner provided by 93-705 through 93-717 for the appointment of district court judges. A vacancy shall be filled in the same manner as the original appointment.

(3) To be eligible for administration law judge, a person must have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution.

(4) Each administrative law judge shall devote full time to his official duties and may not engage in the practice of law. He shall receive the salary of a district judge but shall be a member of the public employees' retirement system and may not be a member of the Montana judges' retirement system.

Section 2. There is a new R.C.M. section that reads as follows:

Administrative law judge -- duties. (1) The division of administrative adjudication shall assign an administrative law judge to hear contested cases before a board in the department of professional and occupational licensing, assigned to hearing under 82A-1604.

(2) The division may assign an administrative law judge to hear and render proposed decisions in contested cases before other agencies as requested by agencies, but is not required to do so.

Section 3. Section 82A-1604, R.C.M. 1947, is amended to read as follows:

"82A-1604. Director -- duties. In addition to his powers and duties under ~~sections~~ 82A-107 and 82A-108 of this act, the director shall:

(1) ~~Appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.~~ refer each request for a contested case hearing before any board to the division of administrative adjudication. The administrative law judge assigned to hear the case shall, notwithstanding 82-4212, make findings of fact and conclusions of law which the board may not alter in its final order.

(2) ~~Whenever~~ whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in ~~section~~ 82A-1603(5) of this chapter, and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) ~~Hire~~ hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority

to hire personnel."

Section 4. Appropriation. The following moneys are appropriated for the biennium ending June 30, 1979:

DEPARTMENT OF ADMINISTRATION

Division of administrative adjudication	Fiscal Year Ending 6/30/78	Fiscal Year Ending 6/30/79
From the general fund	$58,067	$52,818

-End-

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ADMINISTRATIVE RULES TO CONFORM TO LEGISLATIVE INTENT; PROVIDING FOR THE DOCUMENTATION OF SOME LEGISLATIVE INTENT; AMENDING SECTION 82-4219, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. Sections 2 through 4 may be cited as the "Legislative History Act".

Section 2. Statement of policy. The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies. The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

Section 3. Delegation of authority defined. As used in section 4, "delegation of authority" means a statutory authorization to:

(1) adopt rules implementing a statute; or

(2) license (as defined in 82-4202) an activity or establishment regulated by statute.

Section 4. Bills containing delegations of authority to state agencies -- limitations. (1) A bill introduced in a regular or special session of the legislature which contains a delegation of authority to a state agency shall be referred to an appropriate standing committee. The committee or a minority of the committee may not file a favorable report on the bill or on the bill as amended unless the report includes a statement, published in the journal with the report, which indicates the specific purpose for which authority is to be delegated and the committee members' intention as to how this authority will be exercised. If the authority delegated includes the power to adopt rules, the statement shall include an outline or summary of the rules to be adopted. A bill delegating authority to state agency which is not accompanied by the statement may not be removed from the committee.

(2) A bill subject to this section, reported from a committee in the other house than that of its introduction or from a regular joint conference committee, may be supported by a committee statement which incorporates by reference in whole or part the statement of another committee which considered the bill. A bill subject to this

section reported from a free joint conference committee shall be accompanied by a statement from the joint committee which complies with subsection (1).

(3) So much of a statement as is enacted in contravention of this section, as indicated by the journals, is void.

Section 5. Section 82-4219, R.C.M. 1947, is amended to read as follows:

"82-4219. Declaratory judgments on validity or application of rules. ~~The validity or application of a~~ A rule may be ~~determined~~ declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute, as evidenced by documented legislative intent. If the administrative code committee has objected to the adoption or amendment of a rule on the grounds set forth in the preceding sentence, the agency bears the burden, in any action brought under this section, of proving that its rule was not adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute. The action may be brought in the

district court for the county in which the plaintiff resides or has his principal place of business, or in which the agency maintains its principal office. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question."

-End-

_____ BILL NO. ____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A STANDARD ANNUAL RENEWAL FEE FOR PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING FOR THE PAYMENT OF ALL PROFESSIONAL AND OCCUPATIONAL LICENSING REVENUE INTO ONE EARMARKED ACCOUNT FOR THE VARIOUS LICENSING BOARDS; AMENDING SECTIONS 62-505, 62-515, 66-109, 66-110, 66-407, 66-411, 66-512, 66-513, 66-605, 66-607, 66-809, 66-816, 66-904, 66-906, 66-922, 66-1042, 66-1043, 66-1236, 66-1237, 66-1307, 66-1311, 66-1403, 66-1410, 66-1507, 66-1508, 66-1527, 66-1816, 66-1833, 66-1934, 66-2104(2), 66-2111, 66-2203, 66-2207, 66-2213, 66-2354, 66-2361, 66-2405, 66-2407, 66-2427, 66-2503, 66-2508, 66-2606, 66-2607, 66-2706, 66-2711, 66-2814, 66-2819, 66-2909, 66-2910, 66-3016, 66-3020, 66-3105, 66-3211, 66-3330, 66-3410, 66-3413, 66-3505, 66-3509, 66-3608, 66-3707, 66-3709, 66-3807, 66-3910, 82A-1603, 82A-1605, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82A-1603, R.C.M. 1947, is amended to read as follows:

"82A-1603. Department — duties. In addition to the provisions of ~~section~~ 82A-108 ~~of this act~~, the department shall:

(1) ~~Provide~~ provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing~~.~~;

(2) ~~Standardize~~ standardize and keep in Helena all official records of the boards~~.~~;

(3) ~~Make~~ make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board, or elsewhere in the state if requested by the board~~.~~;

(4) ~~Administer~~ administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination~~.~~;

(5) ~~At~~ at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department.

~~(6) Assess the costs of the department to the boards on a prorata basis according to the number of man days and the actual operating costs of the department for each board.~~"

Section 2. Section 82A-1605, R.C.M. 1947, is amended

to read as follows:

"82A-1605. Boards within department — duties. ~~Except for the inspection and code making functions of the state electrical board transferred to the department of justice and enumerated in chapter 12 of this act, and subject~~ Subject to the administrative control of the department and the director of professional and occupational licensing as set forth in ~~section~~ 82A-108 ~~of this act~~ and under this chapter, each agency transferred to the department shall continue to exercise its prescribed statutory functions. In addition, each board within the department shall:

(1) ~~Set~~ set and enforce standards~~,~~ and rules~~, and regulations~~ governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction~~.~~;

(2) ~~Sit~~ sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by the legal counsel appointed under ~~section~~ 82A-1604(1) ~~of this chapter~~.

~~(3) Pay to the department its pro rata share of the assessed costs of the department under section 82A-1603(6).~~"

Section 3. There is a new R.C.M. section numbered 82A-1608 that reads as follows:

82A-1608. Standard annual license fee. Each person licensed by a board allocated to the department of professional and occupational licensing shall pay an annual fee of $16 for the renewal of his license.

Section 4. There is a new R.C.M. section that reads as follows:

Transitional treatment of earmarked payments. (1) All moneys deposited in the earmarked revenue account of a board within the department of professional and occupational licensing after January 1, 1977, but prior to June 30, 1977, and unexpended as of June 30, 1977, are transferred to the professional and occupational licensing earmarked account.

(2) All moneys deposited in the earmarked revenue account of such a licensing board prior to January 1, 1977, remain in that account until appropriated to the board for which the account was created.

(3) The state auditor may not draw warrants against any appropriated moneys described in subsection (1) unless no moneys described under subsection (2) and appropriated for the biennium ending June 30, 1977, are available for the same purpose.

(4) All acts of this legislature appropriating, for the biennium ending June 30, 1979, moneys to a board within the department of professional and occupational licensing from an earmarked revenue account established for that board

are amended to provide that such appropriations are made from the professional and occupational licensing earmarked account and to the department of professional and occupational licensing. The amounts appropriated for the various specified programs in such acts are unchanged, and such programs include the costs of services furnished by the department in support of those programs.

Section 5. Section 66-109, R.C.M. 1947, is amended to read as follows:

"66-109. Compensation of members of board — disposition and use of funds — report. (1) Each member of the board is allowed the sum of ~~twenty-five dollars ($25)~~ per day plus mileage in accordance with ~~section~~ 59-801 and travel expenses~~,~~ as provided for in ~~sections~~ 59-538~~,~~ and 59-539~~,~~ while in the discharge of his actual duties.

(2) All fees and moneys received by the department for licenses from practicing architects shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6),~~ professional and occupational licensing earmarked account."

Section 6. Section 66-110, R.C.M. 1947, is amended to read as follows:

"66-110. Annual fee of licensed architects. A licensed architect in this state who desires to continue the practice of his profession shall annually, during the time he

continues in this practice, pay to the department~~,~~ during the month of July~~,~~ ~~a fee of twenty dollars ($20)~~ the standard annual license fee specified in 82A-1608."

Section 7. Section 66-407, R.C.M. 1947, is amended to read as follows:

"66-407. Officers, official seal. The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records. The department shall keep a record of proceedings of the board. Money collected by the department shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account."

Section 8. Section 66-411, R.C.M. 1947, is amended to read as follows:

"66-411. Fees to be paid by apprentices, students, barbers, barbershops, and training programs. (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card is ~~twenty-five dollars ($25)~~. The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering is ~~twenty dollars ($20)~~~~,~~ and for the issuance of the certificate an additional ~~ten dollars ($10)~~.

(2) A person registered as a barber or barber apprentice shall~~,~~ before July 1 of each year~~,~~ pay a ~~license~~

~~fee of ten dollars ($10)~~ the standard annual license fee specified in 82A-1608 for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before July 1 of each year, the barber shall on renewal of the certificate of registration pay a penalty of ~~ten dollars ($10)~~, in addition to the regular fee of ~~ten dollars ($10)~~. If a certificate of registration is not renewed within ~~one (1)~~ year after the date of expiration, the barber is not entitled to have the certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for in this section. However, physically handicapped persons, trained for the barber profession by the department of social and rehabilitation services and certified by that department as having successfully completed a ~~nine (9) month~~ 9-month course in a reputable barber college are not required to pay fees, and are for a period of ~~one (1)~~ year immediately following their training exempt from all except the sanitary provisions of this chapter. No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state.

(3) In addition to the fees and charges now provided by law, barbershops heretofore established, and which have been under the inspection of the board shall pay ~~an annual~~

~~license fee of ten dollars ($10)~~ the standard annual license fee. Barbershops hereafter established shall pay an initial inspection fee of ~~twenty dollars ($20)~~ for the first year or portion thereof, and shall pay ~~an annual license fee of ten dollars ($10)~~ the standard annual license fee.

(4) Barbershop, school, or college licenses expire on July 1 of each year, following the issuance of the license, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before July 1, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of ~~ten dollars ($10)~~, and a barber school or college which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of ~~fifty-five dollars ($55)~~.

(5) Any person conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter, shall pay an annual license fee of ~~fifty dollars ($50)~~ to the department, or a ~~ten (10) day~~ 10-day license fee of ~~fifteen dollars ($15)~~, and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation."

Section 9. Section 66-512, R.C.M. 1947, is amended to

read as follows:

"66-512. Renewal of license. A license expires on September 1 of each year, and shall be renewed by the department, on payment of ~~a renewal fee of not less than five dollars ($5) nor more than twenty-five dollars ($25), as set by the board~~ the standard annual license fee specified in 82A-1608, the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program for chiropractors conducted by a school of chiropractic licensed to operate in the state of its location, or an educational program conducted by the state association of licensed chiropractors of a state, or an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees during the ~~six (6)~~ months preceding September 1, by examination, shall be granted renewal licenses without attending the educational programs. Failure to renew a license does not prevent a licensee from subsequently applying for and receiving a license, as if there were no lapse of time between the expiration of the old license, and the granting of a renewal license. This section does not prevent a renewal of the

license if in the preceding year for any reason, at least one of the educational programs is not conducted in this state."

Section 10. Section 66-513, R.C.M. 1947, is amended to read as follows:

"66-513. Disposition of fees — receipts and disbursements — reports — per diem and mileage. (1) Fees collected by the department under this act shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account.

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

(3) The members of the board shall receive ~~twenty-five dollars ($25)~~ for each day during which they are actually engaged in the discharge of their duties, plus mileage as provided in ~~section~~ 59-801, and reimbursement for travel expenses, as provided for in ~~sections~~ 59-538, and 59-539."

Section 11. Section 66-605, R.C.M. 1947, is amended to read as follows:

"66-605. Designation of licensees — renewals — reissuance of license — display of license required — recording necessary. A license issued under this act shall be designated as a "registered podiatrist's license" and may not contain any abbreviations thereof, ~~nor~~ or any other

designation or title except that a statement of limitation shall be contained in the license referring to the licensee as a "registered podiatrist—practice limited to the foot~~,~~", so as not to mislead the public with respect to their right to treat other portions of the body. Licenses shall be recorded by the department the same as other medical licenses. The person receiving the license shall have it recorded in the office of the county clerk in the county in which he resides, and the record shall be endorsed on it. If the person licensed moves to another county to practice, he shall record the license in the same manner in the county into which he moves, and the county clerk is entitled to charge and receive the usual fee for making this record. ~~A renewal license fee of three dollars ($3)~~ The standard annual license fee specified in 82A-1608 shall be paid annually on July 1 of each year, and if not paid within ~~three (3)~~ months, the license shall be revoked and may be reissued only on original application and payment of a fee of ~~thirty five dollars ($35)~~. Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice."

Section 12. Section 66-607, R.C.M. 1947, is amended to read as follows:

"66-607. Deposit of moneys collected. Fees and licenses shall be collected by the department and deposited

in the ~~earmarked revenue fund for the use of the state board of medical examiners, subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account."

Section 13. Section 66-809, R.C.M. 1947, is amended to read as follows:

"66-809. Compensation of members of board — deposit of receipts in state treasury. Each member of the board shall receive, as compensation for his services, the sum of ~~twenty-five dollars ($25)~~ per day for each day in actual attendance at any meeting at the board. In addition, each member shall be reimbursed for travel expenses, as provided for in ~~sections~~ 59-538, 59-539, and 59-801, necessarily incurred in the performance of official duties. All fees collected by the department under this act~~,~~ shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account."

Section 14. Section 66-816, R.C.M. 1947, is amended to read as follows:

"66-816. Duration and renewal of licenses and certificates — delinquent renewal fee. (1) Licenses and certificates shall be issued for no longer than ~~one (1)~~ year. Licenses and certificates expire on December 31 unless renewed for the next year. Licenses and certificates may be renewed by application made prior to December 31 of each

year, and the payment of ~~a required renewal fee~~ the standard annual license fee specified in 82A-1608. Expired licenses and certificates may be renewed under rules made by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During each year an active teacher, either full time or part time, must have successfully completed ~~thirty (30)~~ hours professional teacher training at a school approved by the board as a prerequisite to the renewal of the teacher's license.

(b) Persons holding a teacher's license, but not actively engaged either full time or part time in teaching cosmetology during the preceding year, may renew the license by paying the required fee.

(c) Persons holding a teacher's license but not actively engaged in teaching cosmetology either full time or part time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete ~~thirty (30)~~ hours professional teachers' training at a school approved by the board before resuming active teachers' training. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a

person holding a teacher's license and not actively engaged either full time or part time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee of ~~two dollars and fifty cents ($2.50)~~ shall be charged in addition to other fees fixed by law for renewal applications of licenses and certificates made after December 31 of each year. The department shall notify license holders of the expiration date of license not less than ~~thirty (30)~~ days before the expiration date, and call attention to the penalty imposed for failure to renew license by the date of expiration."

Section 15. Section 66-904, R.C.M. 1947, is amended to read as follows:

"66-904. Meetings — notice — quorum — funds — duties — report. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five ~~(5)~~ days' notice must be given by the department to board members of the time and place of the meeting of the board. Three ~~(3)~~ members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest. Money collected by the department under this chapter shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account.

(2) The department shall keep a complete record of meetings and proceedings of the board, and shall keep a complete account of moneys received and disbursements made by the department."

Section 16. Section 66-906, R.C.M. 1947, is amended to read as follows:

"66-906. Certificate to be registered in counties where practicing — replacing lost certificates — admission of dentists from other states — reciprocity — annual license fee — inactive fee — due date of annual fee — revocation of license for failure to pay. ~~(1)~~ The certificate under this act entitles the holder to practice dentistry in any county in this state, if the certificate is first filed for registration and registered in the office of the county recorder of the county in which the holder desires to practice. This act does not permit a holder of a certificate to practice in a county in this state unless the certificate has been first registered in the office of the recorder of the county. A holder of a certificate may practice in more than one ~~(1)~~ or in any number of counties in this state on having the certificate registered in each of the counties in which the holder desires to practice. The department shall, on proof satisfactory to the board of the loss of a certificate issued under this act, issue a duplicate certificate, and a fee of ~~ten dollars ($10)~~ shall

be charged for issuing the certificate.

(2) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state; who is a graduate of an accredited ~~four (4) year~~ 4-year high school or has actual scholastic credits equivalent to a ~~four (4) year~~ 4-year high school course; who is a graduate of a recognized dental school or college; who has been lawfully and continuously engaged in the practice of dentistry for ~~five (5)~~ years or more immediately before filing his application to practice in this state; and who deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, on the payment of a fee of ~~fifty dollars (see 0$50)~~ and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state, without being required to take an examination in theory. However, no license may be issued without an examination in theory to an applicant, unless the state or territory from which the certificate has been granted to the applicant

extends a like privilege to engage in the practice of dentistry to dentists licensed by this state~~,~~ who move to the other state. The board may enter into reciprocal relations with similar boards of other states whose laws are practically identical with this act.

(3) A licensed dentist practicing within this state shall annually pay before March 1, to the department, ~~as a license fee for the year, the sum of ten dollars ($10). The board may increase or decrease the annual license fee to maintain in the earmarked fund, at all times, an amount to be known as the emergency fund to be used for the purpose of administering, policing, and enforcing this act. The emergency fund shall be maintained at an approximate level of two thousand five hundred dollars ($2,500). Notice of the change in the amount of license fees shall be given to each dentist registered in this state by the department~~ the standard annual licensing fee specified in §2A-1608.

(4) If a registered dentist absents himself from the state for a period of ~~one (1)~~ or more years~~,~~ or does not engage in active practice within this state, he may continue his license in good standing by the payment of ~~ten dollars ($10)~~ one-half of the standard annual license fee each year, or at the discretion of the board, he may be reinstated on the payment of a fee of ~~ten dollars ($10)~~ for each year's absence. The annual payments shall be made prior to March 1

of each year, and a receipt or certificate shall be issued by the department.

(5) In case of default in payment of the annual license fee by a dentist, his license shall be revoked by the board on ~~thirty (30)~~ days' notice given to the delinquent of the time and place of considering the revocation. A registered letter addressed to the last known address of the party failing to comply with this requirement, as the address appears on the records of the department, constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the license fee plus a late payment penalty of ~~three dollars ($3)~~ before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect license fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(6) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state."

Section 17. Section 66-922, R.C.M. 1947, is amended to read as follows:

"66-922. Annual license fee for dental hygienists — revocation of license. Before March 1 of each year a licensed dental hygienist shall pay to the department a

~~license fee of three dollars ($3)~~ the standard annual license fee specified in 82A-1608, and in default of payment, the board may after hearing and on ~~thirty (30)~~ days' notice revoke the license of the hygienist in default; but the payment of the fee on or before the time of hearing, with an additional sum fixed by the board, not exceeding ~~three dollars ($3)~~, excuses the default. The department may collect the fee by suit. The board may likewise revoke or suspend the license of a dental hygienist for violating this act."

Section 18. Section 66-1042, R.C.M. 1947, is amended to read as follows:

"66-1042. Annual registration fees — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department~~, an annual registration fee, not to exceed the sum of twenty-five dollars ($25), as prescribed by the board and approved by the department of administration~~ the standard annual license fee specified in 82A-1608. If a person licensed to practice medicine absents himself from the state for a period of ~~one (1)~~ or more years~~,~~ or does not engage in active practice in this state, he may continue his license in good standing by the payment of ~~five dollars ($5)~~ each year, or at the discretion of the

board, he may be reinstated on the payment of a fee of ~~five dollars ($5)~~ or each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration notices~~,~~ at least ~~sixty (60)~~ days before the registration is due. In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be revoked by the board on ~~thirty (30)~~ days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation together with a delinquency penalty of ~~ten dollars ($10)~~. The department may collect the dues by an action at law.

(3) No registration or license fee may be imposed on a licensee under this act by a municipality or any other

subdivision of the state."

Section 19. Section 66-1043, R.C.M. 1947, is amended to read as follows:

"66-1043. Disposition of money received. Money received under this act by the department shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6). In the case of a deficiency the reserve in this account in the earmarked revenue fund may be used on approval by the department of administration and the governor~~ professional and occupational licensing earmarked account."

Section 20. Section 66-1236, R.C.M. 1947, is amended to read as follows:

"66-1236. Renewal of license. (1) The license of a person licensed under this act must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department ~~with a renewal fee of ten dollars ($10)~~ before January 1~~, provided, however, that the board may increase or decrease the annual license fee so as to maintain in the earmarked revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of~~

~~this chapter~~ with the standard annual license fee specified in 82A-1608. On receipt of the application and fee, the department shall verify the accuracy of the application against its record~~,~~ and from other sources the board considers reliable~~,~~ and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31, following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(2) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(3) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this act."

Section 21. Section 66-1237, R.C.M. 1947, is amended to read as follows:

"66-1237. Disposition of fees. Fees and fines collected by the department under this act shall be deposited in the ~~earmarked revenue fund for the use of the board subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account."

Section 22. Section 66-1307, R.C.M. 1947, is amended to read as follows:

"66-1307. Renewal of registration — revocation — fees. A registered optometrist who desires to continue the practice of optometry in this state shall annually before July 2 of each year pay to the department ~~a renewal fee not to exceed the sum of fifty dollars ($50)~~ the standard annual license fee specified in 82A-1608 in return for which a renewal of registration shall be issued. If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without ~~ninety (90)~~ days' notice having been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty of ~~thirty-five dollars ($35)~~."

Section 23. Section 66-1311, R.C.M. 1947, is amended to read as follows:

"66-1311. Compensation of board. Each member of the board may receive as compensation the sum of ~~twenty-five dollars ($25)~~ and travel expenses, as provided for in ~~sections~~ 59-538, 59-539, and 59-801, for each day actually engaged in the duties of his office. Money collected by the department shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)~~

professional and occupational licensing earmarked account."

Section 24. Section 66-1403, R.C.M. 1947, is amended to read as follows:

"66-1403. Regulation — osteopathic licenses — educational qualifications — renewal. (1) It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements: ~~four (4)~~ years of high school or its scholastic equivalent; at least ~~two (2)~~ years preprofessional college education in an accredited college or university; and ~~four (4)~~ years professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board. Application shall be made on forms prescribed by the board and furnished by the department. An applicant who fails the examination is entitled to a second examination without charge.

(2) A person holding a certificate to practice under this act and who is in active practice in this state shall before April 1 of each year pay ~~a renewal fee of fifteen dollars ($15)~~ the standard annual license fee specified in

82A-1608 to the department; and a person holding a certificate to practice under this act, who is not in active practice, shall before April 1 of each year pay ~~a renewal fee of seven dollars and fifty cents ($7.50)~~ one-half the standard annual license fee to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this act and from whom a fee is due stating that the fee is due.

(3) The certificate to practice under this act automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of ~~fifty dollars ($50)~~ if the lapsed fees exceed that amount."

Section 25. Section 66-1410, R.C.S. 1947, is amended to read as follows:

"66-1410. Compensation of board — deposit of fees. (1) Each of the members of the board may receive as compensation a sum not to exceed ~~twenty dollars ($20)~~ for each day actually engaged in the duties of their office, together with travel expenses, as provided for in ~~sections~~ 59-538, 59-539, and 59-801, connected with attending the meetings of the board.

(2) The fees collected by the department under this

chapter shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1602 (6)~~ professional and occupational licensing earmarked account."

Section 26. Section 66-1507, R.C.S. 1947, is amended to read as follows:

"66-1507. Annual renewal of registration fees. A person licensed and registered by the department shall annually pay to the department before June 30~~,~~ ~~a renewal of registration fee of fifteen dollars ($15)~~ the standard annual license fee specified in 82A-1608. A default in the payment of a renewal fee for a period of ~~thirty (30)~~ days after the date it is due increases the renewal fee ~~to thirty dollars ($30)~~ by $15. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. A certificate and renewal expires at the time prescribed, not later than ~~one (1)~~ year from its date. A defaulter in a renewal fee may be reinstated within ~~one (1)~~ year of the default without examination on payment of the arrears."

Section 27. Section 66-1508, R.C.S. 1947, is amended to read as follows:

"66-1508. Store license — certified pharmacy license

— suspension or revocation. (1) The department shall, on application on forms prescribed by the board and on the payment of ~~an annual fee of five dollars ($5)~~ one-fourth the standard annual license fee, license stores other than a pharmacy in which are sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer, qualified under the laws of the state in which the manufacturer resides. The name and address of the manufacturer shall appear conspicuously on each package sold by the licensee. It is unlawful for a store to sell, deliver, or give away household medicinal drugs, without first having secured a license and thereafter keeping it in force by proper renewal. This subsection does not prevent a vendor from selling a patent or proprietary medicine in the original package when plainly labeled, ~~nor~~ or nonmedical articles usually sold by vendors.

(2) The board shall provide for the annual registration and licensing by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of ~~an annual fee of twenty dollars ($20)~~ the standard annual license fee, the department shall issue a license to a pharmacy as a ~~"CERTIFIED PHARMACY"~~ certified pharmacy; however, the license may be granted only to pharmacies operated by

registered pharmacists or registered interns qualified under this act. Any default in the payment of such renewal fee for a period of ~~thirty (30)~~ days after the date the same is due shall increase the renewal fee ~~to~~ by the sum of ~~forty dollars ($40)~~ $20. The license must be displayed in a conspicuous place in the pharmacy for which it is issued, and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word pharmacy to identify his business, or use the word pharmacy in advertising unless a license has been issued and is in effect.

(3) The board may suspend, revoke, or refuse to renew a store or pharmacy license obtained by false representation or fraud; when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge; when the person to whom the license is granted has been convicted of a violation of this act, a felony, or a violation of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, (52 Stats. 1040 through 1059) if a natural person, whose pharmacist or intern license has been revoked; or when the store or pharmacy is conducted in violation of this act. Before a license can be revoked the holder is entitled to a hearing by the board."

Section 28. Section 66-1527, R.C.M. 1947, is amended to read as follows:

"66-1527. Disposition of fees and fines. Fines paid under this act and fees collected by the department for registration and licenses issued under this act shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account.

Section 29. Section 66-1816, R.C.S. 1947, is amended to read as follows:

"66-1816. Disposition of funds. Fees and other moneys collected by the department under this act shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account."

Section 30. Section 66-1833, R.C.S. 1947, is amended to read as follows:

"66-1833. Annual licenses to practice. Annual licenses to engage in the practice of public accounting in this state shall be issued by the department to holders of the certificate of certified public accountant issued under ~~section~~ 66-1819 and to persons licensed under ~~section~~ 66-1820, if all offices, if any, of the certificate holder or licensed public accountant are maintained and registered under ~~section~~ 66-1832. ~~There is an~~ The annual license fee ~~in an~~ is the amount ~~to be determined by the board, not to exceed twenty-five dollars ($25) for a year or part thereof~~

specified in 82A-1608. Annual licenses expire on December 31 of each year and may be renewed annually for a period of ~~one (1)~~ year by certificate holders and licensed public accountants in good standing on payment of ~~an~~ the annual reneval fee ~~of not to exceed twenty-five dollars ($25)~~. Failure of a certificate holder or licensed public accountant to apply for the annual license to practice within ~~three (3)~~ years from the expiration date of the annual license to practice last obtained or renewed, or ~~three (3)~~ years from the date on which the certificate holder or licensee was granted his certificate or license, deprives him of the right to the annual license, unless the board, in its discretion, determines the failure to have been due to excusable neglect. A certificate holder or licensed public accountant who is retiring from active practice or other employment because of illness, age, marriage, or other justifiable cause, in the opinion of the board, may be placed on an inactive list, without prejudicing his right to be issued an annual license at a future date. A request for inactive status must be sent to the department within the three-year period as outlined in this section."

Section 31. Section 66-1934, R.C.S. 1947, is amended to read as follows:

"66-1934. Fees — when due. (1) The following fees

shall be charged by the department and paid into the ~~earmarked revenue fund for the use of the board, subject to sections 82A-1603 (6)~~ professional and occupational licensing earmarked account:

(a) ~~For~~ for each examination, a fee not to exceed ~~fifty dollars ($50);~~;

(b) ~~For~~ for each original resident broker's license issued, a fee not to exceed ~~fifty dollars ($50);~~ ;

(c) ~~For~~ for each annual renewal of a resident broker's license, ~~a fee not to exceed fifty dollars ($50)~~ the standard annual license fee specified in ~~82A-1608);~~;

(d) ~~For~~ for each original nonresident broker's license issued, a fee not to exceed ~~fifty dollars ($50);~~;

(e) ~~For~~ for each annual renewal of a nonresident broker's license, ~~a fee not to exceed fifty dollars ($50)~~ the standard annual license fee~~;~~;

(f) ~~For~~ for each original salesman's license issued, a fee not to exceed ~~twenty-five dollars ($25);~~;

(g) ~~For~~ for each annual renewal of a salesman's license, ~~a fee not to exceed twenty-five dollars ($25)~~ the standard annual license fee~~;~~;

(h) ~~For~~ for each additional office or place of business, ~~an annual fee not to exceed twenty-five dollars ($25)~~ one-half the standard annual license fee~~;~~;

(i) ~~For~~ for each change of place of business or change

of employer or contractual associate, a fee not to exceed ~~twenty-five dollars ($25);~~;

(j) ~~For~~ for each duplicate license, where the original license is lost or destroyed and affidavit is made, a fee not to exceed ~~ten dollars ($10);~~;

(k) ~~For~~ for each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made, a fee not to exceed ~~ten dollars ($10)~~.

(2) The board shall adopt a schedule of fees within the limits set by this section. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least ~~one (1)~~ year has passed since the fee for that particular item was last increased or decreased.

(3) Annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance, unless suspended or revoked by the board for just cause."

Section 32. Section 66-2104(2), R.C.M. 1947, is amended to read as follows:

"66-2104(2). Compensation of members of board — disposition of funds. (1) Each member of the board shall receive a compensation of ~~five dollars ($5)~~ per day for

actual services while attending meetings or otherwise engaged in business connected with the board, and shall receive travel expense reimbursement as provided for in ~~sections~~ 59-538, 59-539, and 59-801.

(2) Money received under this act shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account."

Section 33. Section 66-2111, R.C.M. 1947, is amended to read as follows:

"66-2111. Certificate of authority — contents and issuance. (1) A person, firm, or corporation desiring to obtain a certificate of authority under this act shall make application to the department and shall pay to the department an application fee not to exceed ~~twenty-five dollars ($25)~~ as set by the board. The application shall be on a form prescribed by the board and shall contain information desired by it.

(2) A person, firm, or corporation, who furnishes satisfactory proof to the board that the applicant has for use in the business a set of abstract books or other system of indices and has in charge of the business a registered abstracter, and who furnishes the bond, or other securities, and pays the application fee is entitled, on compliance with this law, to receive a certificate of authority.

(3) Certificates of authority are valid for ~~one (1)~~ year from the date of issuance and shall be renewed by the department on application within ~~thirty (30)~~ days prior to expiration and on payment of ~~a fee not to exceed twenty-five dollars ($25)~~ the standard annual license fee specified in 82A-1608 to the department which fee shall be set by the board. The application shall be accompanied by an affidavit and such other evidence considered necessary, showing that the applicant has complied with this act.

(4) The certificate of authority issued by the department shall, among other things, recite that the bond or other securities have been filed and approved, and the certificate authorizes the person, firm, or corporation, named in it, to engage in and carry on the business of an abstracter of real estate titles in the county or counties of this state, in which the person, firm, or corporation has for use a set of abstract books or system of indices provided for in ~~section~~ 66-2101, and for that purpose to have access to the public records in an office of a city, county, or of the state during office hours, and to make memoranda or notation therefrom as may be necessary for the purpose of making abstracts, and the compiling, posting, copying, and keeping up of their abstract books, indices, or records, access to be during ordinary office hours."

Section 34. Section 66-2203, R.C.M. 1947, is amended

to read as follows:

"66-2203. Expenses and funds — records and reports. (1) Each member of the board is entitled to receive travel expenses, as provided for in ~~sections~~ 59-538, 59-539, and 59-801.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records~~,~~ and are at all times open to public inspection.

(3) Money received under this act shall be deposited in the ~~earmarked revenue fund for the use of the board, subject to section 82a-1603 (6)~~ professional and occupational licensing earmarked account."

Section 35. Section 66-2207, R.C.S. 1947, is amended to read as follows:

"66-2207. Issuance, registration, and reinstatement of licenses. (1) The board shall, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of ~~section~~ 66-2208, if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted shall be issued under seal, ~~and~~ shall be signed by the president and secretary-treasurer

of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law~~,~~ and that after full examination or investigation under reciprocity arrangements he has been found qualified to practice.

(3) A person licensed to practice veterinary medicine in this state shall procure from the department before July 1, annually, his certificate of registration. The certificate shall be issued by the department on the payment of ~~a fee to be fixed annually by the board, not exceeding the sum of twenty-five dollars ($25)~~ the standard annual license fee specified in 82a-1608 and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees who secure licenses by examination during the ~~six (6)~~ months preceding July 1 shall be granted renewals without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued. Failure of a

person licensed to procure a certificate of registration before July 1 annually constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within ~~one (1)~~ year of the forfeiture setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee not in excess of ~~twenty-five dollars ($25)~~ as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled the continuing educational requirements required of all licensees recited above. The person making application for restoration of license within ~~one (1)~~ year of its forfeiture is not required to submit to examination.

(4) Notwithstanding any other provisions in this chapter, a person licensed who enters, or is called to active duty by, a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within ~~one (1)~~ year after release or discharge from duty in the armed services, he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal

within ~~one (1)~~ year after release or discharge is the equivalent of a failure to procure a certificate of registration before July 1 of any year, and the same forfeiture and restoration requirements apply.

(5) A person licensed shall at all times have his residence and office address on file with the department."

Section 36. Section 66-2213, R.C.M. 1947, is amended to read as follows:

"66-2213. Veterinary technicians — definitions — examinations. (1) The board of veterinarians may also issue to qualified applicants licenses for the practice of veterinary technology, to be known as veterinary technicians.

(2) As used in this act:

(a) "Veterinary technician" means a person determined by the board to be qualified by education and training to provide limited veterinary services under the direct supervision of a licensed veterinarian who shall be responsible for the performance of that technician; provided, however, that nothing in this act permits the board or any licensed veterinarian to delegate any of the following duties or functions:

(i) diagnosis;

(ii) prognosis;

(iii) prescription; or

(iv) surgery.

(b) "Direct supervision" means an order by the supervising licensed veterinarian to the veterinary technician, with notice to the client, to perform a specific function for that client within the veterinarian's routine practice, with a follow-up by the veterinarian to evaluate and determine the quality and effectiveness of the function performed and with all billing for such services to be made by the veterinarian.

(3) Each candidate for examination as a veterinary technician shall file in his full name an application for examination with the board at least ~~thirty (30)~~ days before the date set by the board for the commencement of the examination and at the time of making the application shall pay the board a fee of ~~twenty-five dollars ($25)~~. The applicant shall furnish satisfactory proof that he is of good moral character and has earned a diploma or certificate from a school of veterinary technology offering a course of study recognized and approved by the board of veterinarians, as well as such other information as may be required by the board.

(4) The board shall adopt uniform rules within the limitations of this act, governing the matter of examinations for license to practice veterinary technology in the state of Montana, which examinations shall be open to

any applicant meeting the requirements of this act, and shall also provide in such rules for giving reasonable notice of the time and place where examinations shall be held.

(5) A person who can produce satisfactory evidence that he has been employed as a veterinary technician in the office of a regularly licensed veterinarian in the state of Montana for ~~two (2)~~ or more years prior to the passage of this act, may, upon payment of a fee of ~~twenty-five dollars ($25)~~, be granted a certificate to practice by the board of veterinarians; provided that if the board in its discretion finds that animal health and the public interest so require, the board may require the applicant to pass a practical examination in veterinary technology. A certificate must be secured before such person may continue practice as a veterinary technician.

(6) Each applicant who passes the examination prescribed by the board shall be granted a license as a veterinary technician and shall be registered as such in a record kept by the board, and shall receive a certificate in a form to be prescribed by the board.

(7) A licensed veterinary technician may practice in the office of and under the direct supervision of a legally licensed and actively practicing veterinarian or in a department of state government in which a legally licensed

veterinarian is present to exercise direct supervision.

(8) Each licensed veterinary technician shall annually, on or before July 1, procure from the board a certificate of annual registration. The fee for annual registration shall be ~~fixed by the board, not exceeding the sum of ten dollars ($10)~~ the standard annual license fee specified in 82A-1608. Failure of a licensee to procure a certificate of registration on or before July 1 shall constitute a forfeiture of the license.

(9) Each licensed veterinary technician shall keep the board informed of his address, the name and address of the licensed veterinarian or of the state department which is his employer, and such other information as the board may by rule require."

Section 37. Section 66-2354, R.C.M. 1947, is amended to read as follows:

"66-2354. Receipts and disbursements — assistants. The department shall collect all moneys under this act, and shall deposit these moneys in the ~~earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)~~ professional and occupational licensing earmarked account."

Section 38. Section 66-2361, R.C.M. 1947, is amended to read as follows:

"66-2361. Expiration and renewals — fee. Certificates of registration expire on December 31 and become invalid on

that date unless renewed. The department shall notify every person registered under this act, of the date of the expiration of his certificate and the amount of the fee required for its renewal for ~~one (1)~~ year. This notice shall be mailed at least ~~one (1)~~ month in advance of the date of the expiration of the certificate. Renewal may be made during the month of December by the payment of ~~a fee not to exceed twenty dollars ($20) as set by the board for either a professional engineer or land surveyor or both~~ the standard annual license fee specified in 82A-1608. Failure on the part of a registrant to renew his certificate annually in the month of December does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for ~~two (2)~~ consecutive years shall be considered a new applicant and is required to submit a new application."

Section 39. Section 66-2405, R.C.M. 1947, is amended to read as follows:

"66-2405. Examination fee — expiration of license — annual renewal — fees — bond required of master plumbers. No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department ~~one hundred dollars ($100)~~ as an examination fee, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department

~~fifty dollars ($50)~~ as an examination fee. A license when issued expires ~~one (1)~~ year from the date of issuance. A license issued to a master plumber or a journeyman plumber may be renewed annually~~,~~ without examination, at any time prior to its expiration, by a written request for its renewal~~,~~ directed to the department~~,~~ and the payment of ~~not to exceed one hundred dollars ($100) as set by the board for a renewal of a master plumber's license, and not to exceed twenty five dollars ($25) as set by the board for a journeyman plumber's license~~ the standard annual license fee specified in 82A-1608, and renewal is also for the period of ~~one (1)~~ year. No master plumber's license may be issued or renewed unless the applicant has deposited with the department a good and sufficient bond to be approved by the board~~,~~ or cash in the amount of ~~five thousand dollars ($5,000)~~ to insure the faithful performance of his duties arising out of the state plumbing code or this chapter."

Section 40. Section 66-2407, R.C.M. 1947, is amended to read as follows:

"66-2407. Disposition of license fees. Money paid for license fees under this act shall be deposited in the professional and occupational licensing earmarked ~~revenue fund~~ account ~~for the use of the board, subject to section 82A-1603 (6)~~."

Section 41. Section 66-2427, R.C.M. 1947, is amended

to read as follows:

"66-2427. Permit fee — payment — penalties. (1) (a) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the board of plumbers.

(b) A separate permit shall be obtained for each building or structure.

(c) No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(2) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of ~~section~~ 66-2426 or 66-2401. Nothing contained in this act shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work himself. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this act.

(3) (a) Persons required by this section to apply for a permit shall make application on forms provided by the board or authorized representative. He shall give a description of the character of the work proposed to be done, and the location, ownership, occupancy and use of the premises in connection therewith. The board of plumbers or its authorized representative may require sketches, specifications, or drawings and such other information it ~~deems~~ considers necessary in order to determine the scope of the work contemplated.

(b) If the board determines that the sketches, specifications, drawings, descriptions and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the board.

(4) (a) Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the board of plumbers or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if

there is unreasonable delay in applying for the permit, a double fee shall be charged.

(b) For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

(c) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

(d) The board of plumbers shall establish permit fees in accordance with the Montana Administrative Procedure Act, and the fees shall be deposited to the professional and occupational licensing earmarked account ~~revenue fund of the board of plumbers for use in the administration and enforcement of this act and the Montana state plumbing code.~~

(5) All plumbing and drainage systems may be inspected by the board of plumbers or their authorized representative to insure compliance with the requirements of the state plumbing code.

(6) (a) It is the duty of the person doing work

authorized by the permit to notify the board orally or in writing, that the work is ready for inspection. The notification shall be given not less than ~~twenty-four (24)~~ hours before the work is to be inspected.

(b) It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

(7) Whenever any work is being done contrary to the provisions of the state plumbing code, the board or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.

(8) The board may suspend or revoke a permit~~,~~ whenever it is issued in error or on the basis of incorrect information supplied~~,~~ or work performed thereunder is in violation of any of the provisions of Title 66, chapter 24~~, R.C.M. 1947~~."

Section 42. Section 66-2503, R.C.M. 1947, is amended to read as follows:

"66-2503. Application for examination — examination fee. Unless entitled to a license under ~~section~~ 66-2505, a person who desires to be licensed as a physical therapist shall apply to the department, in writing, on a form

furnished by the department. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by ~~section~~ 66-2502. He shall pay to the department at the time of filing his application a fee as established by the board by rule. Said fee shall be commensurate with the cost of the examination and its administration and shall be deposited in the professional and occupational licensing earmarked account ~~revenue fund for the use of the board, subject to section 82A-1602 (6)~~. Anyone failing to pass the required examination is entitled to a second examination within ~~six (6)~~ months."

Section 43. Section 66-2508, R.C.M. 1947, is amended to read as follows:

"66-2508. Annual renewal of license. A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay ~~a fee of five dollars ($5)~~ the standard annual license fee specified in 82A-1608. A license that is not renewed before April, every year, automatically lapses. The board may in its discretion revive and renew a lapsed license on the payment of all past unpaid renewal fees."

Section 44. Section 66-2606, R.C.M. 1947, is amended to read as follows:

"66-2606. Water well contractor's ~~licenses~~ license.

(1) A person desiring to engage in the drilling, making, or construction of one ~~(1)~~ or more wells for underground water in this state shall first file an application with the department for a contractor's license, setting out his qualifications, the equipment proposed to be used in the contracting, and other matters required by the board, on forms adopted by the board. The department shall charge a fee of ~~one hundred dollars ($100)~~ for filing the application of a person. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the professional and occupational licensing earmarked account ~~revenue fund for the use of the board, subject to section 82A-1602 (6)~~. A license to construct water wells shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters.

(2) A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (a) through (f) in ~~section~~ 66-2608(1) and who has applied for a license under this act. The temporary license entitles the holder to engage in the business of drilling, making, or constructing water wells until the time of the next

examination given under ~~section~~ 86-2608. On the applicant's successfully meeting the board's requirements on examination, the temporary license shall be returned to the department and a regular license issued. If the holder of a temporary license fails, after notice of the holding of an examination, to submit himself for examination or to meet the board's requirements, the temporary license expires and shall be returned to the department for cancellation."

Section 45. Section 66-2607, R.C.S. 1947, is amended to read as follows:

"66-2607. License year. The term for licenses issued under this act is from July 1 of each year through the following June 30. After the payment of the initial fee under ~~section~~ 66-2606, a licensee shall pay, before the first day of each license year, ~~a renewal fee of twenty-five dollars ($25)~~ the standard annual license fee specified in 82A-1608. If a licensee does not apply for renewal of his license before the first day of a license year, and remit to the department the renewal fee, he shall have his license suspended by the board; and, if the license remains suspended for a period of more than ~~thirty (30)~~ days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least ~~ten (10)~~ days prior to the ~~time~~ set for action to

be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license, once revoked, may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. A person whose license has been revoked, through his own fault, if he desires to engage in the business of water well drilling in this state, or contracting therefor, must apply under ~~section~~ 66-2606. Notice of suspension shall be given a licensee when the suspension occurs."

Section 46. Section 66-2706, R.C.M. 1947, is amended to read as follows:

"66-2706. Disposition of fees. Money collected by the department under this act shall be deposited ~~for the use of the board, subject to section 82A-1603 (6)~~ in the professional and occupational licensing earmarked account."

Section 47. Section 66-2711, R.C.M. 1947, is amended to read as follows:

"66-2711. Mortician's license — fee and renewal. (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual renewal fee shall be the standard fee specified in 82A-1608 ~~set by the board but may not exceed fifty dollars ($50)~~.

(2) Failure to pay the annual renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty of ~~twenty-five dollars ($25)~~."

Section 48. Section 66-2814, R.C.M. 1947, is amended to read as follows:

"66-2814. Fees. Each electrical contractor shall, before July 1 of each year, file with the department an application in writing for each firm operated by him in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee of ~~seventy-five dollars ($75)~~ for each firm operated by him. Licenses shall bear the date of issue and expire on July 1 following the date of issue. An electrical contractor licensed under this act is entitled to have his license renewed for the ensuing year by payment to the department of ~~a fee of seventy-five dollars ($75) before the date of expiration of the license~~ the standard annual license fee specified in 82A-1608."

Section 49. Section 66-2819, R.C.M. 1947, is amended to read as follows:

"66-2819. Disposition of fees. Money collected by the department under this act shall be deposited in the professional and occupational licensing earmarked ~~revenue fund,~~ account ~~for the use of the board, subject to section~~

~~82A-1603 (6)~~."

Section 50. Section 66-2909, R.C.M. 1947, is amended to read as follows:

"66-2909. Renewal of license. (1) A license expires on December 31 of each year and shall be renewed then or thereafter, by the department, on payment of ~~a renewal fee of not less than ten dollars ($10) or more than twenty-five dollars ($25), as set by the board~~ the standard annual license fee specified in 82A-1608.

(2) Any licensee who fails to renew on or before December 31 of each year shall be required to pay, in addition to the renewal fee, a late renewal ~~fee,~~ in an amount not to exceed ~~ten dollars ($10)~~. Failure to so renew within ~~thirty (30)~~ days following December 31 shall be cause for suspension or revocation of the license."

Section 51. Section 66-2910, R.C.M. 1947, is amended to read as follows:

"66-2910. Disposition of fees — receipts and disbursements. (1) Examination and renewal fees received by the department under this act shall be deposited in the professional and occupational licensing earmarked ~~revenue fund~~ account ~~for the use of the board, subject to section 82A-1603 (6)~~.

(2) The department shall keep an accurate account of funds received and vouchers issued.

(3) The members of the board shall receive a compensation of ~~twenty-five dollars ($25)~~ for each day during which they are actually engaged in the discharge of their duties, and shall be allowed travel expenses, as provided for in ~~sections~~ 59-538, 59-539, and 59-801.

(4) Compensation, mileage, and other expenses necessarily connected with the board shall be paid only out of the professional and occupational licensing earmarked ~~revenue fund~~ account."

Section 52. Section 66-3016, R.C.M. 1947, is amended to read as follows:

"66-3016. Annual renewal fee. A person who practices the fitting of hearing aids shall annually pay to the department ~~a fee not to exceed eighty dollars ($80) as set by the board~~ the standard annual license fee specified in 82A-1608 for a renewal of his license. The fee shall be increased ~~ten percent (10%)~~ for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board. A person who applies for renewal, whose license was suspended for failure to renew, is not required to submit to an examination as a condition of renewal for a ~~three (3) year~~ 3-year year period after suspension."

Section 53. Section 66-3020, R.C.M. 1947, is amended

to read as follows:

"66-3020. Deposit of fees in earmarked revenue fund — per diem and travel expenses. (1) Fees collected by the department under this act shall be deposited in the professional and occupational licensing earmarked ~~revenue fund~~ account ~~for the use of the board, subject to section 82A-1603 (6)~~.

(2) Each member of the board shall receive ~~twenty dollars ($20)~~ compensation when actually engaged in the discharge of his official duty~~,~~ and in addition shall also be reimbursed for travel expense, as provided for in ~~sections~~ 59-538, 59-539, and 59-801, in attending a meeting of the board in the state."

Section 54. Section 66-3105, R.C.M. 1947, is amended to read as follows:

"66-3105. Fees. ~~(a)~~ (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall be required to pay a fee of ~~twenty-five dollars ($25)~~ at the time of such application.

~~(b)~~ (2) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board, not to exceed ~~one hundred dollars ($100)~~. A license shall expire on December 31~~,~~ in the year for which it is issued~~,~~ and shall be renewable annually upon timely payment of the standard annual license

fee specified in 82A-1608.

~~(c)~~ (3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount of not more than ~~twenty-five dollars ($25)~~. An inactive registration shall expire on December 31~~,~~ in the year for which it is issued~~,~~ and shall be renewable annually upon timely payment of the ~~inactive registration~~ standard annual license fee specified in 82A-1608.

~~(d)~~ (4) The fee for issuing a duplicate license shall be ~~ten dollars ($10)~~."

Section 55. Section 66-3211, R.C.M. 1947, is amended to read as follows:

"66-3211. Fees. (1) The department shall collect the following fees, none of which is refundable:

(a) Application fee ~~twenty-five dollars ($25)~~ to ~~fifty dollars ($50)~~;

(b) Examination fee—an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) Certificate fee ~~ten dollars ($10)~~;

(d) Renewal fee ~~twenty dollars ($20) to fifty dollars ($50)~~ the standard annual license fee specified in 82A-1608.

(2) The board may set the application fee ~~and the annual renewal fee~~ annually within the above limits.

~~(2)~~ (3) The initial certificate fee shall be prorated as follows:

(a) If the certificate is issued between January 2 and March 31 .... ~~ten dollars ($10);~~

(b) If the certificate is issued between April 1 and June 30 .... ~~seven dollars and fifty cents ($7.50);~~

(c) If the certificate is issued between July 1 and September 30 .... ~~five dollars ($5);~~

(d) If the certificate is issued between October 1 and January 1 .... ~~two dollars and fifty cents ($2.50).~~

~~(3)~~ (4) Renewal certificates shall be secured annually and dated January 2.

~~(4)~~ (5) Fees received by the department shall be deposited in the professional and occupational licensing earmarked ~~revenue fund~~ account ~~for the use of the board, subject to section 82A-1603 (6)~~."

Section 56. Section 66-3330, R.C.M. 1947, is amended to read as follows:

"66-3330. Fee schedule — earmarked revenue fund — purpose for which funds may be expended. (1) The amount of fees prescribed by this act, unless otherwise fixed, is that fixed in the following schedule:

(a) An application for an original license in any classification shall be accompanied by an investigation fee of ~~twenty-five dollars ($25)~~.

(b) The annual fee for an original license or renewal thereof shall be fixed by the director but shall not exceed ~~fifty dollars ($50)~~.

(2) Fees collected by the department shall be deposited in the professional and occupational licensing earmarked ~~revenue fund~~ account for the use of the department in administering this chapter."

Section 57. Section 66-3410, R.C.M. 1947, is amended to read as follows:

"66-3410. Term of license — renewal — fee — notice — cancellation. (1) The license to practice acupuncture shall expire on December 31 of each calendar year and shall be renewed upon request of the licensee without examination. The request for renewal shall be on forms prescribed by the board and accompanied by a renewal fee of ~~twenty dollars ($20)~~ the amount specified in 82A-1608. The request and fee shall be in the hands of the secretary of the board not later than the expiration date of the license. Any person actively engaged in the military service of the United States and licensed to practice acupuncture as herein provided shall not be required to pay the annual renewal fee or make application for renewal until December 31 of the calendar year in which he returns from military service to civilian or inactive status.

(2) On or before December 1 of each calendar year the

secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.

(3) Immediately following December 31 of each calendar year, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board, unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee of ~~five dollars ($5)~~, shall be in the hands of the secretary prior to February 1 following the expiration date.

(4) Immediately following February 1 of each calendar year, the secretary of the board shall cancel and revoke upon its records all licenses which have not been renewed or reinstated as provided by this act, and shall notify the licensees whose licenses are so revoked of such action.

(5) Any licensee who allows his license to lapse by failing to renew or reinstate the same as herein provided, may subsequently reinstate the same upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee of ~~five~~

~~dollars ($5)~~ for each year following the cancelling of the license."

Section 58. Section 66-3413, R.C.M. 1947, is amended to read as follows:

"66-3413. Deposit of fees. All moneys received under this act shall be deposited ~~with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this act~~ <u>in the professional and occupational licensing earmarked account</u>."

Section 59. Section 66-3505, R.C.M. 1947, is amended to read as follows:

"66-3505. Earmarked account. Money paid for license and equipment fees under this act shall be deposited in ~~an~~ <u>the professional and occupational licensing</u> earmarked ~~revenue~~ account ~~for the use of the board, subject to section 82A-1603(6)~~."

Section 60. Section 66-3509, R.C.M. 1947, is amended to read as follows:

"66-3509. License fees — examination fees. Each applicant for a master license shall pay a ~~seventy-five dollars ($75)~~ application fee, and each applicant for a

journeyman's license shall pay a ~~thirty-five dollar ($35)~~ application fee. All licenses and renewals expire on July 1 of each year. Renewal fees shall be ~~set annually by the board and may not exceed the application fees~~ the standard annual fee specified in 82A-1608. Examination fees shall be set by the board but not to exceed ~~fifty dollars ($50)~~ for a master examination and ~~twenty-five dollars ($25)~~ for a journeyman examination."

Section 61. Section 66-3608, R.C.M. 1947, is amended to read as follows:

"66-3608. Fees — earmarked revenue fund. (1) The fee for an original electrologist license shall not exceed ~~fifty dollars ($50)~~ as set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be the standard annual license fee specified in 82A-1608 ~~set by the board~~.

(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this act expire on December 31 and shall be renewed annually.

(4) All fees or moneys collected by the department under this act shall be deposited in the professional and occupational licensing earmarked ~~revenue fund~~ account ~~for the use of the board in administering this act.~~"

Section 62. Section 66-3707, R.C.M. 1947, is amended to read as follows:

"66-3707. Licenses — permits. (1) The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board not to exceed ~~fifty dollars ($50)~~ and has met the requirements of this act. Fees collected by the department shall be deposited in the professional and occupational licensing earmarked ~~revenue fund~~ account ~~for the use of the board in administering this act.~~

(2) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this act but who has demonstrated to the satisfaction of the board the capability of performing high quality x-ray examinations without endangering public health and safety. Permits issued under provisions of this section shall specify x-ray examinations that may be performed by the holder. Permits shall be valid for a period not to exceed ~~twelve (12)~~ months but may be renewed under the provisions for original issuance.

(3) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire ~~fifteen (15)~~ days after the date of first opportunity for

examination.

(4) The board shall issue temporary permits to uncertified persons to practice as radiologic technologist when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray examinations without endangering public health and safety. Temporary permits shall not exceed ~~twelve (12)~~ months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions.

(5) Every radiologic technologist shall carry his license or permit while at work. The license or permit shall be displayed on request."

Section 63. Section 66-3709, R.C.M. 1947, is amended to read as follows:

"66-3709. Expiration of license — renewal. (1) Licenses expire on December 31 of the first ~~even-~~numbered year following the year of their issuance and on every even-numbered year thereafter.

(2) A license shall be renewed by the board upon payment of ~~a~~ the standard annual license fee ~~set by the board~~ specified in 82A-1608 and submission of a renewal application containing such information as the board ~~deems~~ considers necessary to show that the applicant for renewal

is a radiologic technologist in good standing.

(3) A radiologic technologist who has been heretofore duly licensed in Montana and whose license has not been revoked or suspended, and who has temporarily ceased activities as a radiologic technologist for not more than ~~five (5)~~ years, may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee."

Section 64. Section 66-3807, R.C.M. 1947, is amended to read as follows:

"66-3807. License fees — expiration — reciprocity. (1) Certification of licensure or renewal of registration expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the department of the required fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, may suspend his license by giving written notice to the board. Thereafter, he may resume practice upon payment of the then current fee, and upon approval by the board. Any registrant, other than a properly withdrawn licensee, who fails to renew his registration within a period of ~~sixty (60)~~ days may be reinstated only on reexamination. The board shall issue current renewal registration to each landscape architect promptly upon payment of the standard annual ~~renewal~~

~~registration~~ license fee specified in 82A-1608.

(3) All fees received under the provisions of this act shall be deposited in ~~an~~ the professional and occupational licensing earmarked ~~revenue fund~~ account by the department. ~~The moneys collected shall be used by the department to carry out the purpose, duties, and responsibilities of the act, subject to section 82A-1603(6).~~

(4) The board may certify for licensure without examination an applicant who is legally registered as a landscape architect in any other state or country whose requirements for licensure are substantially equivalent to the requirements of this state and which extends the same privilege of reciprocity to landscape architects from this state."

Section 65. Section 66-3910, R.C.M. 1947, is amended to read as follows:

"66-3910. Licensing. (1) The amount of fees prescribed in connection with a license as a speech pathologist or audiologist shall be as follows, the exact fee to be determined by the board each year based on costs and predicted expenditures:

(a) application and examination fee for a license, no less than ~~fifty dollars ($50) nor~~ or more than ~~one hundred dollars ($100)~~;

(b) license fee, ~~and renewal thereof,~~ no less than

~~twenty five dollars ($25) nor~~ or more than ~~one hundred dollars ($100),~~, and renewal thereof, the standard annual license fee specified in 82A-1608.

(2) All moneys received by the department shall be deposited in the state treasury to the credit of the professional and occupational licensing earmarked ~~revenue fund~~ account ~~for the use of the board and subject to section 82A-1603(6)~~.

(3) Each licensed speech pathologist or audiologist shall on or before July 31 of the year of expiration of his license pay to the board the fee for the renewal of his license.

(4) Renewal will be every two years beginning on July 1 of the appropriate year.

(5) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee while the license remains suspended to engage in the licensed activity, or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(6) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last

preceding regular renewal date before the date on which it is reinstated~~,~~ plus the delinquency fee, if any, accrued at the time of its revocation.

(7) A person who fails to renew his license within the ~~four (4)~~ years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of the act.

(8) No license tax shall be imposed upon speech pathologists or audiologists by a municipality or any other subdivision of the state."

Section 66. Section 62-505, R.C.M. 1947, is amended to read as follows:

"62-505. Duties of board, department, and licensees — license fee. The board shall adopt rules to govern race meets and the ~~parimutuel~~ pari-mutuel system. These rules shall include the following: definitions, auditing, and supervision of the ~~parimutuel~~ pari-mutuel system, corrupt practices, supervision, duties and responsibilities of the presiding steward, racing secretary and other racing officials, licensing of all personnel who have anything to do with the substantive operation of racing, the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state, and the veterinary practices and standards which must be observed in

connection with race meets. A person who participates in a race meet shall be licensed and charged ~~an~~ the standard license annual fee ~~not to exceed ten dollars ($10)~~ specified in 82A-1608, which shall be paid to the department and ~~used for expenses of the board, subject to section 82A-1603 (6)~~ deposited in the professional and occupational licensing earmarked account. Each person holding a license under this chapter~~,~~ and every owner, trainer, jockey, and attendant at a race course in this state~~,~~ shall comply with this chapter and with the rules adopted and orders issued by the board."

Section 67. Section 62-515, R.C.M. 1947, is amended to read as follows:

"62-515. Deposit of unclaimed money. Each licensee holding a horse race meeting shall within ~~thirty (30)~~ days of the end of the meeting pay to the department of professional and occupational licensing for deposit in the professional and occupational licensing earmarked ~~revenue fund~~ account ~~for the board of horse racing~~ all unclaimed winning ticket money from any pari-mutuel pool."

-End-